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ABSTRACT

This study of the legal services provided for the Montgomery County Public Schools (MCPS), Maryland has two purposes: (1) to determine the cost-effectiveness and quality of current arrangements; and (2) to present alternative arrangements with estimates of their costs, effectiveness, and acceptability. MCPS budgets significant funds for legal services (more than $377,000 in fiscal year 1983). This study presents 11 alternative legal services arrangements. The two most viable, which include a mix of service providers, are further defined into five configurations with cost estimates for each. Based on a comparative analysis, the following recommendations are made to the Board of Education: (1) an in-house legal services office with two attorneys, a paralegal assistant, and a legal-secretary; (2) continued use of external private legal firms for about 50 percent of the casework; (3) expanded management of the legal services activities by the MCPS Staff attorneys; and (4) continued use of the County Attorney's Office in connection with the risk management/self-insurance program. (BS)

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MONTGOMERY COUNTY
PUBLIC SCHOOLS
ROCKVILLE, MARYLAND

A Study of the Provision of MCPS Legal Services

January 1984

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Wilmer S. Cody
Superintendent of Schools

Prepared by the Department of Educational Accountability

MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

A STUDY OF THE PROVISION OF MCPS LEGAL SERVICES

by

Dr. Stephen Checkon

John R. Pennington Jr.

and

Clifford M. Baacke

Clifford M. Baacke, Director
Division of Administrative Analysis and Audits

Dr. Steven M. Frankel, Director
Department of Educational Accountability

EXECUTIVE SUMMARY

A STUDY OF THE PROVISION OF LEGAL SERVICES

The Office of the Superintendent of Schools requested the Department of Educational Accountability to conduct a study of the provision of MCPS legal services. The purposes of the study were:

- To determine whether or not the current arrangements for the provision of legal services are cost-effective and result in the desired quality of services
- To present alternative arrangements and estimates of their costs, effectiveness, and acceptability

In MCPS, the funds budgeted for legal services are significant ($377,300 in FY 1983) and are escalating ($127,100 was budgeted in FY 1979.) In addition, actual expenditures have exceeded the budget for the past five years. (See exhibit below.) Using a trend-line analysis, FY 1984 expenditures for legal services were estimated to be $436,000, although only $239,570 is included in the FY 1984 approved budget.

EXHIBIT

Budget Allocations and Expenditures for Legal Services
FY 1979 through FY 1983*

	FY79	FY80	FY81	FY82	FY83
Allocation	127,100	131,286	150,000	252,500	377,300
% Increase	-	3%	14%	68%	49%
Expenditure	213,839	328,007	358,038	524,272	427,492
% Increase over previous year	-	53%	11%	46%	(18%)
Expenditure over Allocation	86,739	196,721	208,038	271,772	50,192
% Overrun	68%	150%	139%	108%	13%

* Source: Superintendent's memorandum to Board Members, January 4, 1983; updated to reflect FY 1983 data through year-end.

To accomplish the study's broader second purpose, 11 possible alternative arrangements for providing MCPS with legal services were examined and reduced to the two which appeared most viable. Because these two arrangements included a mix of service providers, assumptions were made regarding the composition of that mix; and five configurations were defined for further analysis. Costs were estimated for each of the five configurations. Finally, a comparative analysis was made among the five.

Primary Recommendation

Based on the results of the comparative analysis and other factors identified in the report, the Board of Education should establish a new arrangement for providing MCPS legal services as follows:

- An in-house legal services office consisting of two attorneys, a paralegal assistant, and a legal secretary
- Continued use of external private legal firms for about 50 percent of the case work
- Expanded management of the legal services activities by the MCPS staff attorneys
- Continued use of the County Attorney's Office in connection with the risk management/self-insurance program

This recommendation permits MCPS to build a new legal services program which is based on established service providers, while strengthening the overall program management and experimenting with in-house case work. MCPS would maintain maximum flexibility for legal services and could make adjustments between internal and external providers until a "best fit" situation is arrived at and evaluated.

Some tentative suggestions are provided for the allocation of legal services between internal and external attorneys, but are not to be considered firm or final recommendations. They are:

MCPS Staff Attorneys

- Management of legal services
- Counsel and opinions
- Selected case work from Association Relations, Personnel, and/or Special Education

Private Attorneys

- Specific general counsel case work
- Remainder of case work from Association Relations, Personnel, and/or Special Education
- All other case work assignments, including litigation

County Attorney's Office

- Risk management/self-insurance case work

If the primary recommendation had been implemented for all of FY 1984, study estimates predict that the cost would be $368,900, approximately $67,000 less than the $436,000 projected under the current arrangements with no changes.

The first purpose of the study, assessing the current arrangement for legal services, resulted in seven recommendations for improvement. This series of additional recommendations requires action regardless of the decision made on the overall service pattern. The additional recommendations are:

Additional Recommendations

- A comprehensive design for the management of the legal services activities should be developed.
- The Board of Education should adopt a set of principles to serve as the basis for the school system's legal services activity.
- Management should conduct routine formal reviews of selected legal actions.
- Primary users of legal services should be required to make objective, realistic estimates of their needs, and management should use this information as the primary basis for developing and arguing for an acceptable budget level.
- Law firms should submit invoices in greater detail, using a specified uniform format.
- MCPS should initiate written contractual arrangements with the attorneys or firms who are providing legal services.
- MCPS should establish written procedures for obtaining legal services under competitive procurements and the criteria by which the resulting proposals will be evaluated, and a formal procurement activity aimed at recruiting legal counsel(s) should be initiated.

The recommended new arrangement for providing legal services is considered the most desirable way to implement the above management improvements.

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Chapter 1

INTRODUCTION

The Board of Education and senior staff have indicated on several occasions their desire to examine alternatives for obtaining legal services for the Montgomery County Public Schools (MCPS). As a result, the Office of the Superintendent of Schools requested the Department of Educational Accountability to conduct a study of the provision of MCPS legal services. The purposes of the study were:

1. To determine whether or not the current arrangements for the provision of legal services are cost-effective and result in the desired quality of services

2. To present alternative arrangements and estimates of their costs, effectiveness, and acceptability

The creation of an internal MCPS legal office, as part of a comprehensive legal services system, was to be explored as one of the possible alternatives.

Current MCPS Legal Services

Scope

The legal services activity provides the Board of Education and school system administrators with legal counsel and representation in the public law sector. The current arrangement for legal services involves obtaining the services from five sources: (1) a general counsel appointed by Board Resolution No. 698-79, July 23, 1979; (2) a trial counsel also appointed by Resolution No. 698-79; (3) attorneys in specialized areas; (4) hearing officers and hearing examiners, appointed as needed; and (5) the County Attorney's Office in conjunction with MCPS' participation in a risk management/self-insurance program with other county agencies under Board Resolution 398-78, June 12, 1978.

The general counsel has overall responsibility for the legal work of the Board and MCPS. He is responsible for the assignment and coordination of all legal work to special counsels, as appropriate, and for representing the superintendent in matters before the Board. The trial attorney is responsible for presenting all cases heard in Montgomery County courts and for serving as general counsel to the Board when they are judging the actions of the superintendent. Special counsels are used in such areas as association relations, desegregation, pension and retirement, personnel, and special education. The County Attorney's Office is responsible for all tort/liability and workmen's compensation claims arising under the risk management/self-insurance program.

In addition, the services of court reporters and hearing officers are

included within the scope of MCPS legal activities. However, these two types of services account for less than four percent of the total expenditures for all legal services and were not examined in this study.

The 14 areas in which legal services have been provided in recent years and the FY 1983 expenditures in each area are shown in Exhibit 1.1. Appendix A lists the principal attorneys and firms which have provided legal services for one or more of these 14 areas during fiscal years 1982 and/or 1983.

EXHIBIT 1.1

FY 1983 Dollars Billed for Services Rendered by Legal Activity*

Legal Activity	Attorneys	Court Reporters & Hearing Officers	Total	Percent of Total Legal Expenditures
Association Relations	$61,746	$2,696	$64,442	15.1%
BOE Policies	23,616	3,591	27,207	6.4
Closing Schools	105,500	4,968	110,468	25.8
Construction	13,711	-	13,711	3.2
Desegregation	21,148	-	21,148	4.9
General/Other	33,499	-	33,499	7.8
Legal Opinions	8,360	-	8,360	2.0
Pension and Retirement	2,434	-	2,434	0.6
Personnel Matters	62,113	940	63,053	14.7
Procurement	3,637	-	3,637	0.9
School Facilities	8,609	-	8,609	2.0
Special Education	66,856	4,068	70,924	16.6
Tort/Liability Claims	**	-	**	-
Workmen's Compensation	**	-	**	-
Total	$411,229	$16,263	$427,492	100.0
Percent	96.2	3.8	100.0	

* Source: Account records from the Office of the Superintendent

** Legal fees are included in the overall risk management/self-insurance premium, but are not identified as such.

Another way to examine the current scope of MCPS legal services is to look at the types of services performed, instead of the topical areas in which services were provided. Because the current attorneys' invoices do not necessarily show an itemization by type of service, a precise breakdown could not be obtained. However, through interviews with selected staff

members, document reviews, and other study data, it can be estimated that from 40 to 90 percent of each attorney's time is spent on specific case assignments from case preparation through resolution. The percentage is obviously higher for the attorney hired to perform the majority of the MCPS trial work, and lower for the attorneys whose primary role is to provide more general advice. The portion of time not attributed to specific case assignments is spent on consultation and advice, policy review, preparation of written opinions, discussions with the Board of Education, etc.

Within the percentage of time allocated to case work, a subset of cases involve litigation. In order to estimate the amount and assignment of litigation, the study reviewed a sample FY 1983 litigation report summary. As of April 1983, there were 39 cases of litigation reported. Of these, 22 were in the risk management/self-insurance area and handled by an attorney from the County Attorney's Office. Of the remaining 17 cases, 11 were handled by the MCPS trial attorney; and the other six cases were divided among three attorneys.

Budget

In MCPS, the funds budgeted for legal services are significant ($377,300 in FY 1983) and are escalating ($127,100 was budgeted in FY 1979.) In addition, actual expenditures have exceeded the budget for the past five years. Exhibit 1.2 shows the budget allocations, actual expenditures, and the percentage increase over the previous year for legal services from FY 1979 through FY 1983.

EXHIBIT 1.2

Budget Allocations and Expenditures for Legal Services
FY 1979 through FY 1983*

	FY79	FY80	FY81	FY82	FY83
Allocation	127,100	131,286	150,000	252,500	377,300
% Increase	-	3%	14%	68%	49%
Expenditure	213,839	328,007	358,038	524,272	427,492
% Increase over previous year	-	53%	11%	46%	(18%)
Expenditure over Allocation	86,739	196,721	208,038	271,772	50,192
% Overrun	68%	150%	139%	108%	13%

* Source: Superintendent's memorandum to Board Members, January 4, 1983; updated to reflect FY 1983 data through year-end.

Using a trend-line analysis, FY 1984 expenditures were estimated to be $436,000. (See discussion in Chapter 5.) Since legal costs for school closings were high in FY 1982 and 1983 and those levels are not expected to be repeated, the extraordinary expenditures were reduced by 75 percent in the trend calculation. Even so, the estimated FY 1984 legal expenditure is 82 percent over the budgeted amount of $239,570.

In addition to the above legal costs, the fee paid for the risk management/self-insurance program includes the costs for legal services rendered by the County Attorney's Office. For FY 1984, the total fee of 1.6 million dollars includes $2,700 for legal charges. Other legal charges are included in various insurance payments but are not identifiable in the appropriation resolution as legal expenses.

Management

The executive assistant to the superintendent is the primary account manager for the legal services budget in the Office of the Superintendent. He is responsible for over-seeing the uses made of legal counsel and approving payment for services rendered. In general, access to legal counsel is through the executive assistant. Staff at or above the associate superintendent level and Board of Education members have direct access to legal counsel. They are, however, to notify the executive assistant of the uses made so that payment can be authorized.

The private attorney appointed general counsel is also charged with the management tasks of processing all legal matters for appropriate and timely completion and providing overall coordination of the work of special counsel. In practice, however, the general counsel only processes those legal matters which MCPS elects to bring to his attention.

The ombudsman/staff assistant to the Board is responsible for maintaining lists of hearing officers and hearing examiners, and for designating qualified hearing officers to preside at hearings. Charges for this activity are made to the superintendent's budget for legal services. A separate budget account has been established for legal services for association relations. That account is managed by the department director, who has direct access to the attorney.

Study Questions and Methodology

Major Questions

The six major questions addressed in determining the quality and cost-effectiveness of the current arrangements and alternatives were:

1. What are the current arrangements, procedures, and resources for obtaining and using legal services?

2. What matters or issues were the subject of legal counsel and what was their cost and resolution?

3. Which currently allocated and potential resources could be applied to the provision of legal services?

4. How do comparable school districts obtain legal counsel?

5. What are the strengths, weaknesses, and probable costs of the various arrangements which may be used to provide for legal counsel?

6. What are the components and alternative configurations of a cost-effective comprehensive legal system?

The study focused on Questions 1, 4, 5, and 6 with particular emphasis on those aspects of the provision of MCPS legal services which appeared to provide opportunities for improvement. Study Questions 2 and 3 were addressed in less detail because the current structure of attorneys' invoices does not lend itself to analysis by type of service, and MCPS staff were able to furnish only rough estimates. Asking the individual attorneys to supply the additional details retroactively for services rendered during FY 1982 and FY 1983 seemed unwarranted for purposes of the study.

Procedures

This study can best be characterized as descriptive for Questions 1 through 4 and analytic for Questions 5 and 6. The major data collection techniques for Questions 1 through 3 were interviews and reviews of source documents. For Question 4, the results from a previously conducted telephone survey were used. Question 5 was addressed in two parts: first, 11 theoretical approaches to providing legal services were assessed for their applicability to MCPS; then, cost estimates were prepared for the most appropriate alternatives. Question 6 drew on the data gathered from the previous questions and required no additional data collection.

Appendix B shows the individuals interviewed and the questions asked. Appendix C provides the study design and methodology.

Chapter 2

CURRENT LEGAL SERVICES ARRANGEMENTS

For the current provision of its legal services, MCPS has obtained a private attorney as general counsel and regularly uses attorneys from six other private firms in specialized areas. All are paid on an hourly basis for services rendered. These firms and attorneys were essentially in place when the current general counsel was appointed on July 23, 1979. In addition, the County Attorney's Office handles legal matters associated with the risk management/self-insurance program.

The first objective of this study was to determine whether these current arrangements are cost-effective and result in the desired quality of services. Addressing this objective required (1) the review of written policies, procedures, procurement records, management, budget, and internal controls and (2) interviews with some Board of Education members, staff, and attorneys who are involved with the current services. Special emphasis was given to aspects of the current delivery system which appeared to provide opportunities for improvements.

This chapter reviews the study findings which relate to the first objective and presents a series of recommendations for future improvements. These recommendations should be implemented regardless of what action is taken regarding the primary study recommendation for an alternative delivery system for legal services. The following findings are discussed:

- Management of legal services is too diffuse to ensure quality and cost-effectiveness.
- There are no formal Board policies regarding legal services activities.
- Staff involvement in quasi-legal matters is extensive, but the cost-effectiveness of these activities is undetermined.
- Changes are needed in budgeting for outside legal services.
- Record keeping for legal services lacks detail necessary to assure effective internal control.
- Periodic assessment of the legal services market is desirable.
- Contractual arrangements for legal services are inadequate.

Management of Legal Services Is Too Diffuse To Ensure Quality and Cost-Effectiveness

Findings

A formal management system for oversight of legal services does not exist. The informal structure which MCPS currently uses includes several parts. The executive assistant to the superintendent is the primary account manager for the legal services activity. As such, he is able to perform some control functions regarding access to legal counsel and to provide for fiscal accountability. His management responsibilities include the preparation of management reports, development of the legal services budget, scheduling and notice of hearings, maintenance of records, and general oversight of the legal services activity.

The ombudsman/staff assistant to the Board maintains a list of hearing officers and hearing examiners and assigns them to specific cases. Together, he and the executive assistant maintain the only central records for legal services.

The private attorney appointed general counsel is also charged with some management functions. He is to process all legal matters for appropriate and timely completion and to provide overall coordination of the work of special counsels. In practice, the general counsel only processes those legal matters brought to his attention by MCPS. Much of the legal work in areas of specialization is directed to other attorneys without going through the general counsel. In these cases, the general counsel receives only copies of correspondence and monthly bills. The general counsel appears to be excluded from some legal services areas, most notably association relations. A separate budget account has been established for association relations legal services; and that account is managed by the department director, who has direct access to the attorney.

Finally, associate superintendents and some department directors make individual management decisions regarding which situations should be brought to an attorney's attention. The bases for these decisions are not recorded nor coordinated anywhere.

As a result of this diffuse management structure, no assessment of the overall quality or cost-effectiveness of MCPS legal services has been made. In an effort to overcome this limitation on the study findings, a question about perceived quality of services was included in interviews with Board members and MCPS staff. The overall impression is that most respondents are generally satisfied with the legal work received in their respective areas. However, only a few respondents were willing to rate legal services as outstanding; and a few others expressed the feeling that "MCPS could do better." No one suggested that "quality of services" should be a major study issue.

Discussion of the Findings

No formal structure for the overall management of legal services exists and only limited records are kept under the informal structure. Written goals and objectives, a plan of operation, specifications of supports and resources, and a system for monitoring and providing feedback are essential elements of any management system but are largely missing in the legal services area.

It may be that because in the past the legal problems confronting MCPS were primarily of a business or contractual nature, this loose management arrangement was satisfactory. However, changing social conditions, the expansion of federal and state laws affecting education, a more litigious society, and formalized labor negotiations have multiplied the legal issues faced by school officials. The former loose management structure is no longer adequate.

As circumstances changed, the management of legal services did not. Management controls are especially lacking in the monitoring and feedback loop. Basic information is not routinely summarized and evaluated. In addition, the role specified for the general counsel, which could provide some of the needed management control, is not being carried out. It is doubtful that any single person in MCPS has a comprehensive understanding of all facets of the legal services activities.

In the absence of a management evaluation and feedback loop, the study findings cannot be taken as conclusive regarding the quality and cost-effectiveness of current legal services. To pursue the evaluation of services further would require "expert judgement" on a sample of the cases handled recently by MCPS' attorneys and another sample of legal situations which were not referred to an attorney. However, since (a) little evidence was uncovered during the course of the study questioning the overall quality of legal services, (b) no respondent suggested that quality of service should be a major focus of the study, and (c) the study recommendations provide a structure for beginning to evaluate both quality and cost-effectiveness of future legal services, further evaluation of quality as a part of this study did not appear to be warranted.

Recommendations

A comprehensive design for the management of the legal services activities should be developed. The design should include written goals and objectives, a plan of operation, specification of supports and resources, and a system for monitoring and evaluating the operation and for providing feedback.

There Are No Formal Board of Education Policies Regarding Legal Services Activities

Findings

The Board of Education has not adopted policies governing the legal service activity, including the selection, use, and evaluation of outside counsel.

Except for the resolutions appointing the general counsel and some of the specialized attorneys and policies BLB Rules of Procedure in Contested Matters (other than Continuum Education) and BLC Rules of Procedure for Impartial Due Processing Hearings (Continuum Education only), the Board minutes and the MCPS Policies and Regulations Handbook are silent on the subject. The handbook does provide guidance on matters which may result in legal actions (e.g., appeal procedures), but stops short of specifying MCPS' legal policies.

The closest MCPS comes to a written procedure or policy is the August 10, 1979, memorandum to the superintendent in which the currently appointed general counsel describes his role as he perceives it. In turn, the superintendent informed associate superintendents, the ombudsman/staff assistant to the Board, department directors, and principals of the appointment of general counsel by memorandum dated September 6, 1979. In that memorandum, the role of the general counsel was outlined and guidelines were established regarding access to legal services.

Discussion of the Findings

The public school laws of Maryland charge each county board to adopt and make available rules and regulations for the conduct and management of the county public schools (Section 4-107, Duties in General). The formulation and adoption of policies constitutes the basic method by which the Board exercises this charge.

Apparently the legal services activity has not been considered an area for which policy and detailed instructions were necessary. The way the legal services function evolved in MCPS may have reinforced the perception that policy was unnecessary. Over the years, separate counsels were obtained for specialized areas, good working relationships were developed, and informal rules governing those relationships were established. All of this appeared acceptable to both provider and user and to the school system managers.

As a result, reliance for the proper execution of duties in the legal services area is based on a combination of institutional memory and the collective memory of the current external legal services providers. Under such circumstances, turnover must be constantly viewed as a highly disruptive factor. During periods of staff turnover, the legal work load appears to increase. One attorney reported a doubling of his work for MCPS during a recent period of staff transition. Similarly, when turnover occurs among the external providers, MCPS lacks the written procedures and background information to assure continuity of service during the transition. Under those circumstances, staff workloads would almost certainly increase. Although MCPS has been fortunate to have stability of legal services in recent years, eventual turnover is inevitable.

The lack of written policy also adversely affects the management of the legal services activities, as previously discussed.

Recommendations

The superintendent should recommend to the Board of Education a set of principles to serve as the basis for the school system's legal services activity. Following Board adoption of the principles, the executive assistant to the superintendent should initiate a new regulation providing the detailed instructions necessary to put the legal services policy into practice. The policy and regulation should include, but not necessarily be limited to, the selection, use, and evaluation of attorneys; billing practices; management procedures, especially monitoring and feedback; and "what to do if" statements (e.g., what to do if a staff member is served a warrant.)

The additional study recommendations in Chapter 6 go further in strengthening the MCPS management structure over legal services and should help to reduce the potential for continuity problems which could exist due to turnover.

Staff Involvement in Quasi-legal Matters Is Extensive, but the Cost-Effectiveness of These Activities Is Undetermined

Findings

All Educational Services Center staff at the associate superintendent level or higher are directly involved in the legal services activity, some to a greater extent than others. They make decisions which determine the course of action MCPS will follow in many legal situations. Several department and division directors in specialized areas also play significant roles in legal decisions. Other staff carry out lesser, but still significant, roles or sometimes are called upon to perform quasi-legal activities in specific cases. The most significant of the quasi-legal roles performed by staff, as determined from study interviews, include (1) interpreting law and MCPS policy, (2) regulating access to legal counsel, (3) serving as a legal investigator, (4) serving as a negotiator, and (5) preparing case backgrounds.

Based on interviews with both staff and attorneys, key MCPS personnel with these quasi-legal responsibilities are generally knowledgeable of the law and system policies. They make efforts to keep current of new legislation and legal decisions rendered elsewhere. Estimates of the percentages of legal or quasi-legal inquiries handled without recourse to legal counsel range from 80 to 95 percent of all initial inquiries. Attorneys reported that the inquiries which are passed on to them were of substantial merit for legal counsel, but obviously they had no basis to judge the inquiries which were not passed on.

However, the study found no objective evidence to show whether having staff members handle this level of quasi-legal work is cost-effective when compared to the cost of external legal services and when the time taken from other staff responsibilities is considered. Evidence is also missing to demonstrate that cases which should reach an attorney actually do reach one.

Discussion of the Findings

Clearly, managers have a responsibility and must have the commensurate authority to make basic decisions regarding the need to refer inquiries to an attorney. However, a corresponding responsibility is placed on management to exercise oversight of such decisions and to be certain they are cost-effective. Not only must the cost value of staff time be considered in comparison to attorney fees, but the costs of the eventual legal outcomes must be recorded and evaluated. For example, a settlement brought about by staff intervention without an attorney's time is no saving if a few hours of legal intervention would have reduced the cost of the settlement. The study found no objective evidence that this has happened in MCPS, but it also found no evidence that it has not.

Recommendations

The management structure which is designed for legal services should provide for routine formal reviews of selected actions taken in each of the 14 areas in which there is significant legal activity. The reviews should include actions taken both with and without recourse to legal counsel. In addition, MCPS job descriptions should identify when knowledge of applicable laws is a position requirement; and for those positions requiring significant involvement in legal areas, realistic credentials and time estimates should be included.

Changes Are Needed in Budgeting for Outside Legal Services

Findings

Legal fees have been underbudgeted by the superintendent and the Board of Education, and/or under funded by the County Council for nine of the past ten years. The extent of underbudgeting in recent years is shown on Exhibit 2.1 which compares budget funds initially allocated with the amounts actually expended. The Office of the Superintendent account for legal services shows a constant increase in funds allocated each year, but never enough to cover the costs actually incurred. The smaller Department of Association Relations legal services budgets have fluctuated slightly from year to year; but they still have not managed to keep pace with expenditures, especially in the last few years. The use of an attorney as a member of the "impasse" panel in 1982 was one of the principal reasons for a significant increase in cost.

The study identified the general perception that MCPS has had difficulty in estimating the amount to budget for legal services because it is a cost over which the school system has little actual control. In many instances legal expenses are incurred in defense of a position being challenged by a private citizen or in seeking legal counsel and advice on actions to be taken to avoid a legal challenge in the future.

EXHIBIT 2.1

Extent of MCPS Underbudgeting for Legal Services
FY 1979 through 1983

Fiscal Year	Original Allocation	Amount Expended	Over Expended Amount	Over Expended Percentage
		Office of the Superintendent		
1979	$84,000	$169,176	$85,176	101
1980	79,286	271,506	192,220	242
1981	100,000	302,484	202,484	202
1982	200,000	432,644	232,644	116
1983	325,000	363,050	38,050	12
		Association Relations		
1979	43,100	44,663	1,563	4
1980	52,000	56,501	4,501	9
1981	50,000	55,554	5,554	11
1982	52,500	91,628	39,128	75
1983	52,300	64,442	12,142	23

In contrast to that perception and the budget history for legal services, MCPS users of legal services who were interviewed evidenced considerable knowledge of the legal issues associated with their particular fields. They were able to project a decline in future legal issues, estimate a continuation at present levels, or identify emerging issues that might increase legal costs. Some persons expressed the view that legal costs could be better controlled by them if they had a separate legal budget for which they were responsible.

Discussion of the Findings

The underbudgeting and/or under funding of legal services costs fosters the impression that legal costs are constantly rising out of control. Furthermore, such a budget cannot be used as an adequate basis for controlling future costs. As a result, extraordinary measures—employment freezes, increases in lapse and turnover savings, and supplemental appropriations--have been necessary to cover deficits to which legal services contribute. These measures in turn have sometimes caused adjustments in the budgets and activities of other school system operations because of the loss of planned resources.

Realistic budget estimates for legal services costs need to be developed and supported by the Board of Education and the County Council so that adequate funds are obtained and expenditures controlled. The estimates should be based on (1) the best available information as to what a particular

function, activity, or program can be expected to cost in future budget years; (2) prior years' costs and trends; (3) knowledge of current happenings; and (4) expected future events. Primary users of legal services are in the best position to make these realistic budget estimates and should be required to do so.

At the same time, other study findings do not support the concept of establishing legal accounts by users since that practice may further defuse the management and oversight of the provision of MCPS legal services.

Recommendations

Primary users of legal services should be required to make objective, realistic estimates of their needs, and management should use this information as the primary basis for developing and arguing for an acceptable budget level. Additional legal services budgets and accounts should not be established.

The Record-keeping System Lacks Detail Necessary To Assure Effective Cost Control

Findings

MCPS normally receives monthly invoices from private law firms for a variety of legal services. Some invoices are reviewed by the staff person requesting legal services, but many are not. In any event, although improvements have been made in recent years, the invoices still do not contain the degree of specificity that would enable a user to review and evaluate adequately the services received. Most invoices contain a general description of the legal services rendered and the hours and costs charged since the last invoice. Information regarding such items as case or file numbers, dates on which services were provided, billable hours by type of service or person involved, and cumulative case costs are rarely included. However, the outside attorneys interviewed indicated they can generally provide whatever detail MCPS desires, if they are asked to do so.

Some MCPS staff did express an interest in seeing the invoices containing the cost of legal services they received, and other staff expressed a desire for more detailed information.

Discussion of the Findings

Greater management control over the cost of legal services is necessary in order for MCPS to assure itself that it is obtaining the requested services as economically as possible. An important part of this control is the information submitted by the attorneys.

More detailed information would not only enable MCPS to evaluate intelligently the types of services received and the costs for each but would also enable MCPS to compare and evaluate the types and costs of

services received for similar cases or similar work from among the different private firms. A data base could also be established for the future solicitation and evaluation of new private attorneys.

The following types of information are minimally essential for such a control function:

- Name of the MCPS staff person who requested the service
- Case or file number
- Brief description of the request
- Dates services were rendered
- Billable hours by person (name and level) for the types of services rendered, including hourly breakdowns and costs for conferences, preparation of briefs and testimony, research, litigation, meetings, and other activities
- Cumulative totals of billable hours and costs from inception of the case to the present date
- Disposition of the case on the final invoice, with a notation that it is the last billing related to that case

If, as attorneys have reported, this information is or soon will be maintained in automated systems, the costs for such information should be minimal.

Recommendations

Law firms should submit invoices in greater detail using a specified uniform format, and MCPS users should review the invoices for reasonableness of services received and verification of accuracy before they are approved for payment. The design for the legal services management structure should provide for retaining certain invoice information in a centralized location for oversight and evaluation purposes.

Periodic Assessment of the Legal Services Market Is Desirable

Findings

Little documentation exists as to how MCPS evaluated and selected its present counsels. In the late 1970's, MCPS obtained the legal services of its present general counsel and its trial counsel. The previous general counsel had resigned, and the Board had appointed an attorney who served as interim general counsel for about 11 months. In the meantime, the Board advertised for a new general counsel, and 40 applicants responded. After many interviews, the interim counsel was appointed general counsel, and a trial counsel from Montgomery County was also appointed. No contracts were written. The entire process was conducted outside the MCPS procurement

regulations since legal services are specifically exempted from those regulations.

The record is even less clear regarding the procurement of the various special counsels. Most of these attorneys were apparently obtained during the 1970's without even the minimal competition described for the general counsel above. The informal arrangements that existed with these special counsels were unchanged when the general counsel was appointed. There is no basis for determining when, how, or if the arrangements with the current general and special counsels should be reviewed.

These procurement practices for obtaining MCPS legal services stand in sharp contrast to the procurement practices for obtaining the MCPS external auditors. Although the external auditors have a somewhat analogous relationship to the Board of Education and management in that continuity is important and the relationship must be one of mutual confidence and confidentiality, the audit contract has been regularly rebid every five to six years. When one audit firm challenged the requirement to rebid the contract, both Board members and staff responded that contracts involving public funds must be subjected to periodic competition and reexamination.

The MCPS legal services procurement practices also stand in contrast to changing conditions for public sector legal services procurements in general. For example:

- The Model Procurement Code for State and Local Governments, adopted by the State of Maryland, includes lawyers and legal services under its general provisions for competitive selection procedures for services. (Note: The Maryland Education Article is silent regarding legal services, so the model code is not binding on school boards.)

- Although the National School Boards Association takes no position regarding the procurement of legal services, the Educational Policies Service of NSBA distributes a sample policy regarding the school attorney which calls for a competitive selection procedure.

- A small number of the school districts contacted in the study's 1982 national survey (See Chapter 3.) were then using periodic competitive selection procedures for legal services; and more recent study contacts with other districts, including Anne Arundel County, show an increase in that number.

- One attorney interviewed during the study specifically suggested that MCPS establish a competitive selection process for legal services, which he described as "a recent innovation of the last four years in the public sector."

- A number of other attorneys interviewed for this study, especially those with larger firms, acknowledged that they periodically receive and respond to requests for competitive selections from public bodies.

Most respondents cautioned that, while such competitive procurements may be appropriate, the evaluation of proposals must be done on a price and quality basis. Since there are no uniform pricing practices in the legal profession, looking only at price can be misleading and result in poor services afterwards. The primary objective should always be to obtain high quality legal services at a reasonable, not necessarily lowest, price.

Discussion of the Findings

MCPS obtains its legal services from firms and attorneys with whom it has developed long-standing, comfortable relationships. Such relationships with attorneys can be extremely valuable. However, MCPS has not assessed the legal services market since 1979 to determine whether or not it is obtaining the highest quality legal services available at the most economical price. During that same period the concept of competitive selection procedures for legal and other personal services contracts has been adopted by many public bodies, including school systems. MCPS uses competitive selection procedures for most of its other personal services contracts.

In the absence of competitive procurements, the school system has no current basis for establishing legal services written contracts under the most favorable terms and conditions. MCPS also lacks one important kind of leverage to maintain high quality services at economical rates. While it may not be appropriate to bring the legal procurements under the full umbrella of current procurement regulations, the development of the legal services policy recommended earlier should include minimal requirements for competitive selection procurements, including the evaluation standards and procedures which should be used.

One important aspect of the evaluation procedures for legal services is the concept of separate Technical and Business Proposals, a concept already in use by MCPS for other personal services procurements. Under this approach, each interested attorney or legal firm would submit a Technical Proposal which states qualifications to perform the work, but includes no price information. Technical Proposals are first evaluated to determine those legal offerors who are judged technically qualified. This evaluation would identify and give credit for an attorney's general experience with education law and specific experience with previous MCPS legal services.

Only after that technical evaluation is completed are the Business Proposals reviewed to determine the contract prices. Attorneys who are not judged technically qualified cannot receive the contract, regardless of the price offered. Such a procedure is responsive to the attorneys' concerns outlined above that proposals be judged on both quality and cost.

Recommendations

MCPS should establish written procedures for obtaining legal services under competitive selection procurements and the criteria by which the resulting proposals will be evaluated. These procedures should then be used to test existing legal services against the marketplace on both a cost and quality basis.

Contractual Arrangements for Legal Services Are Inadequate

Findings

There are no written contractual arrangements between MCPS and its various attorneys and/or the firms they represent. In practice, MCPS requests legal services from any one of its attorneys as the need arises and then pays for the services at the current hourly rate charged by the attorney. From time to time, a rate adjustment is requested by the attorney and approved by staff.

Verbal understandings or agreements between the Board and various attorneys may exist; but if so, they were arrived at in executive session with no public record available to this study nor to interested parties.

As discussed in the previous section, legal services are specifically excluded from MCPS procurement policies and procedures, which would otherwise lead to a formal contract based on the terms and conditions of the Request for Proposals and the attorney's response.

Discussion of the Findings

A written contract is normally advantageous for both parties in a personal services situation like legal services. The contract stipulates such terms and conditions as hourly rates, what persons are anticipated to perform the work, what other charges are to be included, how and when the terms may be changed or the rates increased, and what services are expected. The absence of a contract leaves all parties operating on a "good faith" basis, which may be fine until one party or the other is dissatisfied.

The lack of a written contract has ramifications for several of the other management problems discussed in this chapter since it is difficult to (1) budget accurately when rates may be unpredictably changed, (2) obtain uniform information and invoices, and (3) test current arrangements against the "marketplace."

Recommendations

MCPS should initiate written contractual arrangements with the attorneys or firms who are currently providing legal services.

As quickly as is practical, the formal competitive selection activity recommended in the previous section should be initiated. Written contracts should then be based on the terms and conditions of the Request for Proposals, be obtained on the most favorable basis available to MCPS, and be structured in accordance with the Board's adopted policy specifying the rules and procedures which outside attorneys should follow in providing MCPS with legal services.

Chapter 3

LEGAL COUNSEL OF OTHER SCHOOL DISTRICTS

An MCPS survey of legal counsel activities in 32 large school districts was conducted in fiscal year 1983 so that MCPS could (1) compare and contrast that information with its way of doing business, (2) identify areas in which it might need to improve and change, and (3) determine how various alternative arrangements have been implemented elsewhere. (See Appendix D for a list of these school districts and other pertinent information).

Most school districts reported legal costs that were lower than that experienced by MCPS. Like MCPS, about one-half of the school districts reported that they used private law firms exclusively and paid hourly rates for the legal services they received. A very few school districts reported using public attorneys, while the remainder reported using a combination of in-house attorneys and private law firms.

The survey also provided additional information for MCPS to consider regarding its relations with private law firms and with in-house staff attorneys. Certain advantages and disadvantages to these two methods of operation and other comments were offered.

MCPS Legal Costs High

Total costs reported for legal services ranged from zero for the Milwaukee district which uses local public attorneys to about $650,000 for the Cleveland Public School District (75,800 students) that recently established its own Office of General Counsel in an effort to reduce its legal services costs. The future budget for this new office was set at $250-$300 thousand plus outside attorney costs. The range of legal costs reported by the 32 school districts surveyed is shown in Exhibit 3.1.

EXHIBIT 3.1

Range of Legal Costs

Range of Costs (000's omitted)	Outside Counsel	In-house/ Outside Counsel	Public Counsel	Total	Percentage
$ 0 - 99	2	1	3	6	19
100 - 199	5	3	1	9	28
200 - 299	5	3	0	8	25
300 - 399	2	3	0	5	16
400 - 499	2	0	0	2	6
500 - 599	0	1	0	1	3
600 and over	0	1	0	1	3
Totals	16	12	4	32	100

Clearly over one-half of the school districts have costs ranging from $100,000 to $299,000 with another 35 percent clustering around these two limits. Only 12 percent reported costs of $400,000 or more, as compared with the $527,500 experienced by MCPS in fiscal year 1983.

Further analyses revealed that school districts with large student populations seem to rely more heavily on in-house legal staff and tend to have higher legal service costs. Conversely, school districts with smaller student populations seem to rely more heavily on outside legal counsel and tend to have lower legal service costs. Nevertheless, there is no real explanation as to the wide variation in school districts costs except, perhaps, the nature of the cases against which a school district must defend itself and the litigious climate of its community. One large school district with in-house counsel, for example, attributed 50 percent of its legal costs to a court-ordered desegregation case. This type of situation, especially in regard to school closings, could certainly become true for the MCPS where most of the legal services costs arise in defense of a position being challenged by members of the community.

Current Arrangements for Legal Services

Three types of arrangements for obtaining legal services were identified by the respondents. The most predominant arrangement reported was the exclusive use of private law firms—the present arrangement used by MCPS. A combination of in-house attorneys and private law firms was the next most frequently used arrangement. No school districts relied exclusively on in-house staff attorneys, and only a few reported using public attorneys. Exhibit 3.2 shows the number and percentage of school districts using these arrangements.

EXHIBIT 3.2

Obtaining Legal Services

Type of arrangement	Number	Percentage
Private law firms	16	50
In-house staff and private law firms	12	38
Public attorneys	4	12
Totals	32	100

Hourly Rates--Predominant Fee Arrangement

A majority of school districts reported paying private law firms on the basis of hourly rates. MCPS does likewise. The remaining school districts reported paying on the basis of a retainer and hourly rates, or a retainer only. Exhibit 3.3 shows the number and percent of school districts and the type of payment arrangement that they use.

EXHIBIT 3.3

Type of Fee Arrangement

Type of fee arrangement with private law firms	Total	Percentage
Hourly rates	16	57
Retainer and hourly rates	10	36
Fixed retainer	2	7
Totals	28	100

Fees are typically arranged between the attorney/firm and a school district liaison and approved by the Board. The fees are generally commensurate with the current legal fees being charged in the community.

MCPS' private law firms/attorneys establish their hourly rates and notify MCPS for approval. They advised that retainer arrangements can be obtained but are not widely used in this area because of their potential unfairness to one of the parties.

Salary Costs for In-house Staff

The school districts employing in-house staff attorneys reported a wide range of salary costs. Generally, beginning attorneys' salaries range from $25,000 to $36,000, midlevel attorneys' from $35,000 to $40,000, and experienced attorneys' from $40,000 to $60,000.

Reporting Levels of In-house Staff

Most in-house staff attorney's report directly to the superintendent, although one reports to both the superintendent and the Board. Exhibit 3.4 shows the reporting levels in those school districts using in-house staff attorneys.

EXHIBIT 3.4

Reporting Levels

Reporting Level	Number	Percentage
Superintendent	8	67
Board of Education	3	25
Both	1	8
Totals	12	100

Advantages and Disadvantages of Specific Legal Arrangements

All survey respondents were asked to comment on the advantages and disadvantages of their current legal services arrangements. Most expressed satisfaction with their current arrangements. Many of the reported advantages and disadvantages were similar to those developed during this study and discussed in later chapters. A number of individual respondents mentioned specific advantages and disadvantages regarding matters that should be considered by a school system that is assessing various alternatives to determine the legal services arrangements most appropriate to its operations. These were the following:

- An outside attorney is minimally influenced by the internal political system. An in-house attorney, on the other hand, is subject to internal organizational pressures and has a potential for loosing objectivity.
- An in-house attorney has the opportunity to prevent unnecessary litigation. An outside attorney has greater difficulty in controlling the amount of litigation.
- Use of outside attorneys affords greater expertise in a wide variety of legal areas. They also have more extensive contact with other members of the legal community.
- In-house attorneys can create personnal turnover problems and a demand for higher salaries.

Other Comments Regarding Legal Arrangements

The following additional comments regarding legal arrangements were offered to MCPS:

- Experience in school law is vital for hiring a new in-house attorney.

- A staff attorney should be given the authority/responsibility as a functioning member of the administrative team. At the same time, however, this can cause some conflict in the staff attorney's role.

- Preferably, the staff attorney should report directly to the superintendent.

- It is desirable to hire an in-house lawyer as a coordinating point even if he/she does not actually do litigation.

Conclusions

As can be seen from the summary table, there are many different ways in which school systems obtain legal counsel, and there is a wide variation in what they are spending.

Chapter 4

ALTERNATIVE ARRANGEMENTS FOR PROVIDING LEGAL SERVICES

The public school laws of Maryland, Section 4-104. Counsel, permits the school board to "(i) retain counsel to represent it in legal matters that affect the board; and (ii) contract for the payment of a reasonable fee to the counsel." The section stipulates further, "(2) Funds for these fees shall be included in the annual budget." The law is silent and leaves to each local Board of Education decisions regarding detailed arrangements for providing these legal services.

In this chapter, 11 operationally different alternative arrangements for providing legal services are described and assessed for their applicability to MCPS needs without regard to cost. Among the criteria used for this assessment are (1) existing legal or contractual constraints, (2) degree of disruption in the transition from the current arrangements, (3) potential for improving the overall management of legal services, (4) flexibility for MCPS, and (5) evidence of successful implementation here or in other major school districts. In some cases, a highly negative assessment on one or a few criteria removed the alternative arrangement from further consideration without additional examination.

On this basis, six of the arrangements are dismissed because of law or current commitments. Two others are eliminated because of inherent limitations. Another arrangement is deleted as not sufficiently advantageous to MCPS. The two remaining arrangements are the following:

- Legal services performed jointly by attorneys from two or more private legal firms and the County Attorney's Office (approximates the existing arrangement)
- Legal services performed in concert by an in-house legal office, attorneys from two or more private firms, and the County Attorney's Office

The remainder of this chapter presents the 11 arrangements and discusses their reduction to the two most promising approaches. Chapter 5 estimates the future costs of using each of these two approaches in MCPS. Chapter 6 includes final analyses and recommendations for the best arrangement and for implementation.

Arrangements for Providing Legal Services

The study identified three functionally different methods for providing legal services. They are (1) creation of an in-house office for legal services, (2) retention of legal services from the County Attorney's Office, and (3) procurement of legal services from the private sector. The last method may be subdivided into (a) use of a single private firm or (b) use of two or more firms jointly. If all possible combinations of these methods

are considered, 11 alternative arrangements for providing legal services may be postulated, as follows:

1. Legal services performed exclusively by an in-house legal office
2. Legal services performed exclusively by one private legal firm
3. Legal services performed exclusively by the County Attorney's Office
4. Legal services performed by two or more private legal firms
5. Legal services performed jointly by an in-house legal office and one private legal firm
6. Legal services performed jointly by an in-house legal office and two or more private legal firms
7. Legal services performed jointly by an in-house legal office and the County Attorney's Office
8. Legal services performed jointly by one private legal firm and the County Attorney's Office
9. Legal services performed jointly by two or more private legal firms and the County Attorney's Office
10. Legal services performed jointly by an in-house legal office, one private legal firm, and the County Attorney's Office
11. Legal services performed jointly by an in-house legal office, two or more private legal firms, and the County Attorney's Office

Arrangements Excluded by Local Conditions

In Montgomery County the existing conditions rule out the first six arrangements for the near future. The current contract with the County Attorney's Office for legal services in connection with the risk management/self-insurance program eliminates from consideration those arrangements which do not include that office (Arrangements 1, 2, 4, 5, and 6). In addition, the Charter of Montgomery County, Maryland prohibits the county attorney or his staff from being engaged as MCPS legal counsel. Therefore, exclusive use of that office (Arrangement 3) is ruled out. Future consideration of any of these six arrangements would require removing the local conditions which govern the expansion or elimination of the County Attorney's Office for MCPS legal services. Such a change is not recommended at this time, as discussed in the following sections.

Elimination of the Role of the County Attorney's Office

The elimination of the County Attorney's Office entirely from MCPS legal services would require removing that office from handling cases under the risk management/self-insurance program. Since legal services are an integral part of that program, and the program itself has saved money for MCPS, such a change appears unjustified.

Expansion of the Role of the County Attorney's Office

An expansion of the role of the County Attorney's Office requires an amendment to the County Charter. (A precedent in the State of Maryland for the representation of a school system by the County Attorney's Office exists in Baltimore County. However, the school system there is treated as a department of county government for more purposes than just legal services.)

The advantages of an expanded role for the County Attorney's Office are the following:

- A similarity between the county and the school system for many types of public-sector legal cases (e.g., routine personnel, purchasing, and construction matters)
- An established relationship on which expansion could be based
- Legal work performed on an annual salary basis rather than higher hourly rates
- Access to a relatively large legal staff with opportunities for legal specialization within that staff

The disadvantages to an expanded role are the following:

- A perceived or real conflict of interest under certain legal case situations
- A lack of current familiarity with, and expertise in, education law
- Loss of continuity with current MCPS legal providers
- A generally negative attitude by MCPS staff interviewed

On balance, the disadvantages (especially the conflict of interest issue) appear to outweigh the advantages, many of which can also be obtained under other alternative arrangements. Therefore, since neither the elimination nor expansion of the role of the County Attorney's Office appears justified, Arrangements 1 through 6 remain out of consideration.

Arrangements Excluded by Inherent Limitations

Limiting the role of the County Attorney's Office in MCPS legal services to only the support of the risk management/self-insurance program has the practical effect of limiting MCPS legal services to a single provider under Arrangements 7 and 8. Arrangement 7 is primarily an in-house legal office, and Arrangement 8 is primarily a single private firm. The use of any other external legal expertise would be excluded under these alternatives.

During the study interviews, both MCPS staff and attorneys indicated that MCPS would probably always have a need for some selected specialized legal services from private sources regardless of what basic plan was adopted to provide the majority of the legal services. Legal representation in trial proceedings was the example most frequently cited since different skills and expertise may be required for court appearances than are necessary for the practice of administrative law. The flexibility to obtain such additional private expertise would not exist under Arrangements 7 and 8. A further inherent drawback to these two arrangements is the massive disruption and loss of continuity between the current MCPS legal services and the new plan.

In addition, Arrangement 7--virtually all in-house services--would require MCPS to establish <u>at one time</u> an office of legal counsel large enough to perform the work currently done by the present general counsel and attorneys from six other private firms. None of the persons interviewed, nor the literature reviewed, suggested placing that heavy a reliance on in-house counsel, especially in one abrupt shift. The survey of other major school districts (reported in Chapter 3) indicated that <u>no</u> school district contacted is now using or would recommend using <u>only</u> in-house counsel. All districts using in-house attorneys reported a need for a mix between inside and outside counsel.

Arrangement 8 has the further disadvantage that, once a single firm is selected, no further competition exists in the marketplace to keep the quality of service up while holding the costs down. Unless MCPS undertook another competitive procurement, with the inherent disruption to legal services and to the continuity of knowledge of MCPS legal needs, the single firm would be "locked in."

Both arrangements do present advantages. The primary one is the easier management and coordination when dealing with a single entity, whether in-house or external. Other benefits are more timely responses to complex legal issues which may cut across areas of specialization and the concentration of services which permits a large enough staff to facilitate professional interaction. However, most of these advantages can be obtained under other arrangements.

The inherent limitations--primarily the total exclusion of other specialists and the massive disruption to convert from the current arrangement to either of these--without appreciably greater benefits cause Arrangements 7 and 8 to be dropped from further consideration.

Arrangement Excluded by Lack of Advantages

Arrangement 10 postulates a combination of in-house legal counsel, one private law firm, and the County Attorney's Office for risk management cases. This arrangement is not sufficiently advantageous because it is duplicative in obtaining benefits while alleviating none of the major draw backs discussed for other arrangements.

The primary advantage for both in-house and single-firm arrangements is the improved management and coordination of legal services. However, it is not necessary to have both concentrations to achieve better management. In fact, including both in-house counsel and a single firm adds to the coordination problem while also increasing overhead costs. A concentration of services to facilitate complex responses and to permit professional interchanges is a strength of either in-house or single-firm providers, but is diluted by trying to have both.

At the same time, this particular combination of providers has the same major disadvantages as Arrangements 7 and 8—requiring massive disruption and discontinuity between current and future services and excluding MCPS use of any other private legal specialists. Therefore, Arrangement 10 is eliminated from further consideration.

Arrangements Meriting Further Consideration

The two remaining arrangements from the original list of 11 are the following:

- Arrangement 9--Legal services performed jointly by two or more private legal firms and the County Attorney's Office (approximates the existing arrangement)

- Arrangement 11--Legal services performed jointly by an in-house legal office, two or more private legal firms, and the County Attorney's Office

These remaining arrangements are advantageous because they (1) provide flexibility in obtaining specialized services as needed, (2) offer as much continuity to the current providers as MCPS may deem beneficial, (3) create an opportunity to consolidate some legal services, (4) contain the potential for improving overall management of legal services, (5) present no impediments due to local conditions, and (6) have been successfully implemented in major school districts. Although each arrangement has disadvantages (which will be considered in Chapter 6 where a recommendation is made between the two arrangements), none of the draw backs was judged significant enough to terminate further consideration.

Possible Configurations Within These Arrangements

Because both of the remaining alternative arrangements include a mix of service providers, some assumptions must be made regarding the composition of the mix before cost estimates and further comparisons can be made. It is first assumed that, under both arrangements, the County Attorney's Office is limited to cases related to the risk management/self-insurance program. Since this aspect of the mix becomes a constant across all possible configurations, and since it represents a cost of only $2,700 in a legal services budget of over $500,000, no further discussion of this element of the mix will be included.

Arrangement 9

For Arrangement 9, which calls for legal services to be performed jointly by two or more private legal firms and the County Attorney's Office, two configurations are most likely. Both closely approximate the current arrangements, except that they would introduce improved management controls.

Unlimited Multiple Private Firms. Under this configuration, a general counsel and as many individual attorneys or firms as may be needed to address MCPS needs in all specialized areas are obtained without limitation on the number. This configuration continues the current philosophy of selecting the "best fit" for each need and of maintaining close liaison between individual MCPS staff members and attorneys in the related fields. However, the general counsel would be assigned a larger role in overall management of legal services and that role would be enforced by MCPS.

Consolidation of Firms. This configuration, although similar in most respects to the previous one, would introduce efforts to limit the number of firms used by MCPS through consolidation of services. Allowing firms or individuals to bid on more than one area of MCPS legal needs should (1) lower costs through an increased volume of work and less overlap and (2) enhance management control through dealings with fewer firms. At the same time, care would be needed to avoid sacrificing "best fit" solely for the sake of consolidation. One of the firms would still need to function as general counsel, including management functions.

Arrangement 11

For Arrangement 11, which calls for legal services to be provided jointly by an in-house legal office, two or more private legal firms, and the County Attorney's Office, the possible configurations depend on the amount of case work MCPS elects to bring "in-house" along with the management and control of the total legal services activity. Three levels are considered in this report, as follows:

1. In-house management, but little containment of outside case load
2. In-house management, with moderate containment of outside case load
3. In-house management, with extensive containment of outside case load

Summary and Conclusions

The alternative arrangements which were considered in this chapter for providing MCPS with legal services and the disposition of each are summarized in Exhibit 4.1. Five of the arrangements were dismissed so as not to terminate the existing arrangements with the County Attorney's Office. A sixth was dropped so as not to increase the role of that office.

Two other arrangements were deleted for inherent limitations and others eliminated as not being sufficiently advantageous.

The two remaining arrangements (9 and 11) were judged as viable for MCPS, and configurations were identified for each based on the mix of service providers. The five resulting configurations are examined for their cost implications in the next chapter. A final study recommendation is then developed and presented in Chapter 6.

EXHIBIT 4.1

Alternative Arrangements Considered and Their Disposition

	Arrangement	Disposition
1.	Legal services performed exclusively by an in-house legal office	Excluded based on present use of County Attorney's Office
2.	Legal services performed exclusively by one private legal firm	Excluded based on present use of County Attorney's Office
3.	Legal services performed exclusively by the County Attorney's Office	Excluded by County Charter limits on County Attorney
4.	Legal services performed by two or more private legal firms	Excluded based on present use of County Attorney's Office
5.	Legal services performed jointly by an in-house legal office and a private legal firm	Excluded based on present use of County Attorney's Office
6.	Legal services performed jointly by an in-house legal office and attorneys from two or more private firms	Excluded based on present use of County Attorney's Office
7.	Legal services performed jointly by an in-house legal office and the County Attorney's Office	Excluded based on inherent limitations
8.	Legal services performed jointly by attorneys from one private firm and the County Attorney's Office	Excluded based on inherent limitations
9.	Legal services performed jointly by attorneys from two or more private firms and County Attorney's Office	Remains under consideration
10.	Legal services performed jointly by an in-house legal office, attorneys from one private firm, and the County Attorney's Office	Excluded based on lack of significant advantages
11.	Legal services performed jointly by an in-house legal office, attorneys from two or more private firms, and the County Attorney's Office	Remains under consideration

Chapter 5

ESTIMATED COSTS OF VIABLE ARRANGEMENTS FOR PROVIDING LEGAL SERVICES

The analysis in Chapter 4 reduced the list of 11 possible alternative arrangements for providing MCPS legal services to the two most promising arrangements and identified possible configurations for each arrangement based on the mix of providers. These are the following:

A. Legal services performed jointly by two or more private legal firms and the County Attorney's Office

   1. Unlimited Multiple Private Firms

   2. Consolidation of Firms

B. Legal services performed jointly by an in-house legal office, two or more private legal firms, and the County Attorney's Office

   1. In-house management, but little containment of outside case load

   2. In-house management, with moderate containment of outside case load

   3. In-house management, with extensive containment of outside case load

In this chapter an estimate is first developed of the probable costs of MCPS legal services in FY 1984 and beyond under the current arrangement if no changes are made. Then costs for each of the viable alternative configurations are postulated and compared to the estimated trend line. The chapter concludes that, while cost savings should not be the paramount consideration, one of the alternatives appears likely to result in a savings of $67,100 (15 percent) over FY 1984's estimated costs, while another alternative is likely to result in a savings of $82,400 (19 percent) over projected costs. Savings or additional expenses of the other alternatives are relatively inconsequential.

Baseline Estimates of Continuing Legal Costs

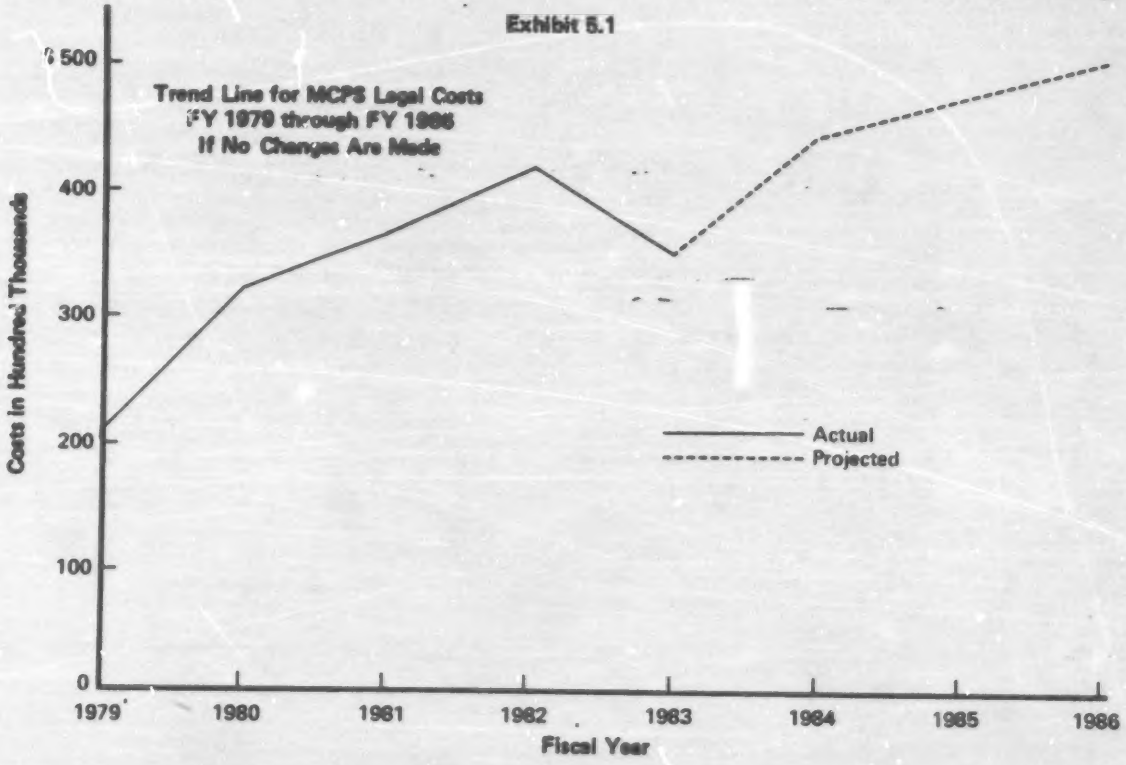
MCPS legal services costs increased steadily until 1981, rose dramatically in 1982, and then declined for the first time in 1983. Whether the one-year downward trend or the longer-term continual increase will extend into future years is difficult to predict because so many of the factors affecting legal services are outside the school system's control. Nevertheless, it must be assumed that prior experience provides some indication as to probable future trends. In this regard, two assumptions are made as follows:

- In prior years there have been a number of cases of significant dollar costs involving dismissals, civil rights, and suspensions. While these particular cases may have been resolved, it is assumed that similar cases of like magnitude will be encountered in future years.

- The dramatic 1982 cost increase corresponds to the very large number of school closings at that time. It is assumed that in the near future the number of closings in any one year will be considerably less than the peak of 19.

In accordance with these assumptions, a trend line was developed to estimate future legal costs. Actual historic costs are used in every area of legal services except school closings. For the school closings, the actual historic costs are reduced by 75 percent. (This reduction corresponds to the average of six closings annually compared to the five school closings for 1982 and 19 closings for 1983 which together contributed to the bulge in legal costs.) The trend line results in projected FY 1984 legal costs of $436,000 with annual increments of about $35,000 each succeeding year, assuming no changes are made in current legal services or management practices. The trend line is shown graphically on Exhibit 5.1. At the current average hourly rate of $81.60, the 1984 amount will purchase 5,343 hours of legal services, the equivalent of approximately 3 person years of service.

Exhibit 5.1



The costs and hours estimated here will serve as the basis for computing and comparing the projected costs of each alternative configuration under consideration.

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Assumptions Used in Calculating Cost Estimates for the Various Configurations

In order to estimate the costs of the five configurations remaining in consideration, four assumptions regarding potential savings and workloads had to be made. These assumptions are:

1. More effective management of all legal services activities would reduce billable hours by 10 percent.

2. Consolidation of the private firms and/or attorneys used by MCPS would reduce billable hours and/or result in lower hourly rates through economies of scale by 5 percent.

3. Improved management of legal services will require 850 person hours, of which 180 hours are included in the current arrangements and, therefore, in the baseline data.

4. A one-to-one relationship will exist between caseload hours billed by an external attorney and caseload hours provided by in-house staff attorneys.

There are no firm, objective data to support these assumptions. Rather, they are subjective judgments which were made after considering all available information. For the first two assumptions on potential savings, the considerations included the following:

- Literature reviews and study interviews which proport that savings can be achieved through better management and through consolidation of service providers

- Review and discussion of possible extremes in savings from zero to 25 percent

- The effect variations in these assumptions might have on the availability or elimination of viable alternatives for MCPS

The third assumption regarding the hours necessary for effective management stems from internal discussions and interviews with attorneys in law firms. It is not unusual in the larger law firms visited for the equivalent of one person year of partner time to be dedicated to management rather than case work. Since none of the configurations under discussion propose creating an "MCPS law firm" of the size of these firms, and since an MCPS legal manager will not be involved in "marketing" services, the estimate of one person-year was cut by 50 percent. Halftime equates to 850 hours since all study estimates are based on a 1700-hour "year."

The 1700-hour year is based on the review and discussion of billing practices, including overhead and fees, and of the number of "billable" hours in an attorney's schedule. The standard 2,080-hour work year cannot be applied because some hours are for leave, etc., and others are used by the attorney for keeping abreast of current laws and practices and for other general matters which are necessary to all case work, but cannot be billed

to any individual client. The judgment that an MCPS in-house attorney would also need the same time for leave, etc., and keeping up-to-date led to the fourth assumption. Actually, MCPS may benefit from the one-to-one equivalency since, like all MCPS staff members, the staff attorney will be expected to attend some evening meetings and otherwise extend the work week without additional compensation beyond the fixed salary. An external attorney, on the other hand, would usually bill the client for such evening hours.

The subjectivity of these four assumptions was recognized during the study discussions. Therefore, at the end of this chapter, after the cost estimates are developed for each configuration, an adjustment of plus-or-minus 15 percent is calculated to create a range of probable costs. The alternative configurations can be compared by using this range of costs, thereby offsetting any errors of judgment in the savings calculations.

Cost Estimates for Configurations A.1. and A.2.
Use of Private Firms

The preceding assumptions are first applied to the two configurations included under the arrangement which provides legal services jointly through two or more private legal firms and the County Attorney's Office.

Configuration A.1.--Unlimited Multiple Private Firms

In this configuration, no effort is made to reduce the number of firms; however, better management of legal activities is introduced, with corresponding costs and savings. In most respects this configuration matches the current arrangement and requires adjustments to the base line data only as follows:

Item		Hours	Costs
Base:	Case load	5,163	$421,300
	Management	180	14,700
	Total	5,343	436,000
Adjustment:	Addition for management	670	54,600
	Savings from better management	(516)	(42,100)
	Net	154	12,500
Estimate:		5,497	$448,500
Increase over present projected costs:			$ 12,500

This configuration would cost $448,500 in comparison to the baseline cost of $436,000, an increase of $12,500. Therefore, from the cost standpoint alone, this option appears undesirable.

Configuration A.2.--Consolidation of Firms

In this configuration, an attempt is made to consolidate the number of private firms used by MCPS in order to generate some economies of scale and reduce duplication of effort in the legal services area. The same efforts at better management are repeated from the first configuration. Therefore, the following adjustments to the baseline date are required:

Item		Hours	Costs
Base:	Case load	5,163	$421,300
	Management	180	14,700
	Total	5,343	436,000
Adjustment:	Addition for management	670	54,600
	Savings from better management	(516)	(42,100)
	Savings from consolidation	(258)	(21,000)
	Net	(104)	(8,500)
Estimate:		5,239	$427,500
Savings over projected costs:			$ (8,500)

This configuration would cost $427,500 in comparison to the baseline cost of $436,000, a savings of $8,500, which is only 2 percent of the baseline.

Cost Estimates for Configurations B.1, B.2., and B.3. Use of In-house and Private Firms

In order to estimate the costs of the three configurations included under the arrangement which provides legal services jointly through an in-house legal office, two or more private legal firms, and the County Attorney's Office, more analysis is required than just the adjustment to baseline data used previously. First, adjustments must be made to the total work load for savings due to improved management and other factors, and the resulting work hours assigned to in-house staff or external firms. Second, the salary, fringe benefits, and other costs of the MCPS in-house legal and support staff must be calculated. Third, the cost of the external case hours must be determined and added to internal costs to arrive at a total cost estimate. Since the analysis methodology and most of the necessary assumptions are similar for all three configurations, these cost estimates will be developed in parallel, with any distinctions noted at the appropriate place in the description.

Adjustments to and Assignment of Case Load

Exhibit 5.2 shows the calculations for identifying and adjusting the legal case load and assigning it between the in-house legal staff and external attorneys. For each configuration, the process starts with the same baseline data identified earlier and removes the 180 hours currently

assigned to external management. The resulting 5,163 person hours of case work is adjusted for efficiencies of management and consolidation, and then for additional management, using the same assumptions stated previously.

EXHIBIT 5.2

Determination and Allocation of Total Hours for Legal Services

	Configuration		
	B.1.	B.2.	B.3.
Baseline hours	5,343	5,343	5,343
Less current management	(180)	(180)	(180)
Base case load	5,163	5,163	5,163
Savings from better management	(516)	(516)	(516)
Savings from consolidation	-	(258)	(258)
Adjusted case load	4,647	4,389	4,389
Addition for management	850	850	850
Total work load	5,497	5,239	5,239
Portion of total assigned to:			
In-house attorneys	1,700	3,400	4,239*
External attorneys	3,797	1,839	1,000

* Maximum number of hours to be brought in-house in order to maintain option of using external counsel when that option is deemed desirable.

The assumption regarding savings due to better management is applied to all three configurations since improved management is a characteristic of each. The assumption regarding savings due to the consolidation of the number of providers is not applied to Configuration B.1. because consolidation will not necessarily take place under that option. The consolidation assumption is applied to the other two configuration because having MCPS assume a substantial portion of the legal services is a form of consolidation regardless of how many additional external providers are continued. (Note that Configuration B.2. leaves sufficient case load with external providers to make possible some consolidation outside MCPS. If such consolidation were to take place, some additional savings might be possible.)

The 850 hours required for improved management and control are then added to the adjusted case load for each configuration to obtain the total person-

hours of work to be carried out. That total hours are divided between MCPS staff attorneys and external attorneys according to the number of in-house attorneys contained in each configuration. In the case of Configuration B.3., which brings the maximum case load in-house, a substantial number of hours (1,000) are purposely left allocated for outside legal counsel to be used where that arrangement is clearly preferable. This leaves in-house, approximately one half-time of a person-year of work unassigned.

Cost of In-house Legal Office

Development of the estimates of in-house legal costs are shown in Exhibit 5.3. The number of attorneys to be hired by MCPS ranges from one (Configuration B.1.) to three (Configuration B.3.), with the latter roughly matching the full-time-equivalent of the outside attorneys used in FY 1983, plus the allowance made for more effective management.

The estimated salaries are based primarily on discussions with practicing attorneys in the Montgomery County area and reviews of the 1984 MCPS salary schedules. While the levels are somewhat subjective, they represent a best judgement as to what would be needed to attract the high caliber of attorneys necessary to MCPS. These salary ranges are also comparable to those identified in the survey of other large school districts. (See Chapter 3.)

The three possible classifications of staff attorneys and a brief description of each follow:

- Attorney III. The incumbent should have extensive experience in practicing administrative law, considerable knowledge of school law, and be fully responsible for handling all facets of MCPS legal services--management and case work. The person would report to the Office of the Superintendent at a level parallel to a department director or as a part of an existing department already reporting to the superintendent. This person would command a salary of about $55,700 (Q-10).

- Attorney II. The incumbent should have considerable experience in practicing administrative law, a working knowledge of school law, and be capable of assuming responsibility for much of the management of MCPS legal services. The person would report to either the Office of the Superintendent at a level parallel to a division director or to an Attorney III, depending on which configuration is implemented. The salary would be about $45,300 (P-5).

- Attorney I. The incumbent would be a relatively new attorney with experience in one or a few selected areas of school law. The person would report to an Attorney III, with a salary of about $33,800 (N-1).

The paralegal and legal secretary positions would be middle-level supporting services positions.

Exhibit 5.3 shows that the in-house portion of the costs of the three configurations would be $101,215 for Configuration B.1.; $218,800 for B.2.; and $272,004 for B.3.

EXHIBIT 5.3

Estimates of MCPS In-house Legal Costs

Component	Configuration B.1.	B.2.	B.3.
Salaries:			
Attorney III	-	$55,700	$55,700
Attorney II	$45,300	45,300	45,300
Attorney I	-	-	33,800
Paralegal aide	10,000 (1)	20,000	20,000
Legal secretary	9,000 (1)	18,000	18,000
Total salaries	64,300	139,000	172,800
Fringe benefits at 35 percent (2)	22,505	48,650	60,480
Total salaries and fringe benefits	86,805	187,650	233,280
Overhead at 16.6 percent	14,410	31,150	38,724
Total in-house legal costs (3)	$101,215	$218,800	$272,004

(1) Estimate based on half-time work.
(2) Would be 10 to 12.5 percent if certified for State retirement.
(3) Not included is about $15,000 of start-up costs for a small legal library, automated equipment, furniture, and similar items. If these costs are amortized over five years, the amounts would be relatively inconsequential.

Total Cost Estimates

Exhibit 5.2 showed the allocation of hours between in-house and external attorneys under each of the three configurations. Exhibit 5.3 estimated the total costs for the in-house portion for each option. It only remains to multiply the external hours by the base cost of $81.60 an hour and add the internal and external costs to reach the total cost estimates for Configurations B.1., B.2., and B.3. These calculations are as follows:

	Configuration		
	B.1.	B.2.	B.3.
External costs (Exhibit 5.2 @ $81.60)	$309,835	$150,062	$81,600
Internal costs (Exhibit 5.3)	101,215	218,800	272,004
Total cost estimate	$411,050	$368,862	$353,604
Savings over baseline	$25,000	$67,100	$82,400

The results of these calculations (rounded to nearest hundreds) show that Configuration B.1. would cost $411,000 in comparison to the baseline cost of $436,000 for a savings of $25,000 (6 percent). Configuration B.2. would cost $368,900 for a savings of $67,100 (15 percent). Configuration B.3. would cost $353,600 for a savings of $82,400 (19 percent).

Range of Probable Costs

The cost estimates developed in this chapter are based on various assumptions and judgements which affect the calculations. Even slight modifications to some assumptions could affect the outcome. Consequently, the estimates should be viewed as comparative approximations, not as precise cost measures. To compensate for the possible margin of error, each cost estimate was further adjusted for a 15 percent plus and minus range. The results are shown in tabular form in Exhibit 5.4 and graphically in Exhibit 5.5.

The two exhibits clearly show some cost reductions as the arrangements move from Configuration A.1. (totally external providers with no efforts at consolidation) to Configuration B.3. (maximum containment of legal services in-house). Interestingly, the most expensive configuration is the one closest to the current MCPS arrangement. However, there is considerable overlap of the range of costs for the various configurations; and even the least expensive one overlaps the most expensive one.

Since all of the cost estimates are calculated starting from the same trend-line base data, it can be assumed that, if actual legal costs vary from the trend line, the range of probable costs for each configuration will also vary in an approximately proportional amount. The comparisons used in this report should, therefore, remain valid except for the very improbable circumstance where the MCPS legal services workload would decline dramatically.

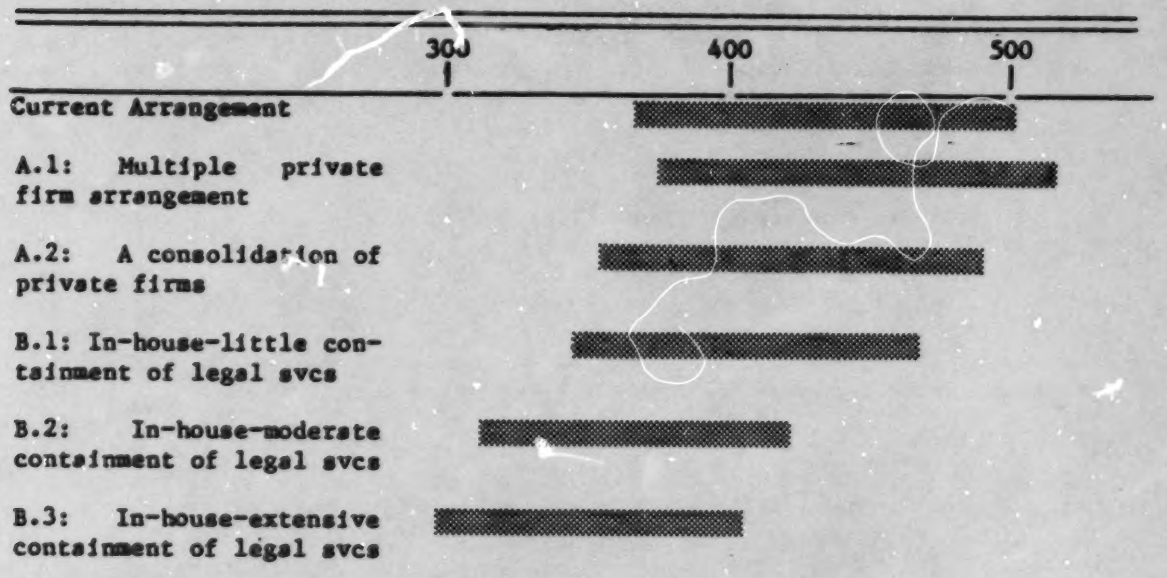
EXHIBIT 5.4

Estimates of the Range of Probable Costs

Arrangement	Probable Cost Estimate	(-15%)	(+15%)
Current	$436,000	$370,600	$501,400
Solely private firms			
A.1. Multiple firms	448,500	381,300	515,800
A.2. Consolidation	427,500	363,400	491,600
In-house & private			
B.1. Little containment	411,000	349,400	472,700
B.2. Moderate containment	368,900	313,600	424,200
B.3. Extensive containment	353,600	300,600	406,600

EXHIBIT 5.5

Graphs of Range of Probable Costs



Summary and Conclusion

An analysis of the probable costs of the alternative arrangements which may be viable for the provision of MCPS legal services suggests that any form of in-house legal operation would be less costly than keeping all legal services in the hands of external private firms. The analysis also shows that two of these in-house configurations may offer significant savings. Configuration B.2. appears likely to result in a $67,100 savings (15 percent), and Configuration B.3. may lead to an $82,400 savings (19 percent). Savings or additional expenses for the other configurations are relatively inconsequential.

However, none of the configurations is judged to offer savings of sufficient magnitude to justify its selection based solely on the basis of costs. Additional criteria must be considered as the final analysis in Chapter 6 will demonstrate.

Chapter 6

ANALYSIS OF VIABLE ARRANGEMENTS AND RECOMMENDATIONS FOR PROVIDING MCPS WITH LEGAL SERVICES

This chapter brings together the findings of the previous chapters, analyzes and ranks the various arrangements identified as viable, and presents recommendations regarding the best arrangement and methods for its implementation. First, the baseline data and the five configurations are summarized. Then, the criteria for analysis are described and applied, and a recommendation is made from among the five configurations. Finally, some tentative suggestions are made regarding the possible distribution of legal services between internal and external attorneys.

Summary of Baseline Data and Configurations

The projected cost estimate for providing MCPS with legal services during FY 1984 under the existing arrangements is $436,000, including 5,343 billable hours at an average cost of $81.60. Only 180 hours of these hours are directed toward external management of the legal services activity. The estimated costs are projected to increase at a rate of approximately $35,000 annually in subsequent years if no changes are made.

To examine whether another arrangement might provide more cost-effective legal services, 11 alternative arrangements were examined and reduced to the two most viable for MCPS. These two arrangements were then subdivided into five possible configurations and cost estimates applied as follows:

A.1. Legal services performed jointly by an unlimited number of private legal firms and the County Attorney's Office, with the general counsel providing overall management, at a total estimated cost of $448,500

A.2. Legal services performed jointly by a consolidated number of private legal firms and the County Attorney's Office, with the general counsel providing overall management, at a total cost of $427,500

B.1. Legal services performed jointly by an in-house legal office, an unlimited number of private legal firms and the County Attorney's Office, with MCPS' staff attorney providing overall management, but with little containment of outside case load, at a total cost of $411,000

B.2. Legal services performed jointly by an in-house legal office, an unlimited number of private legal firms, and the County

Attorney's Office, with MCPS' staff attorney providing overall management, and with moderate containment of outside case load, at a total cost of $368,900

B.3. Legal services performed jointly by an in-house legal office, one ormore private legal firms, and the County Attorney's Office, with MCPS' staff attorney providing overall management, and with extensive containment of outside case load, at a total cost of $353,600

Criteria and Analysis of Configurations

The five configurations summarized above were subjected to comparative analysis on the basis of the following six criteria, which were applied by project staff and DEA management with the MCPS legal services environment and needs in mind:

- Management and control should be improved.
- Quality of anticipated services should remain high.
- Transition from current arrangements should minimize disruption and loss of continuity.
- Flexibility for MCPS should be maximized.
- MCPS staff involved with legal services should find the arrangement acceptable.
- Cost-effectiveness should be maximized.

These comparative criteria are somewhat different from the criteria used in Chapter 4 for the initial screening of the 11 alternative arrangements. Some criteria used there, such as "no local legal or contractual constraints," are not useful in this comparative analysis because only alternatives which met that criteria were kept under consideration.

Exhibit 6.1 summarizes the comparative rankings of each configuration on each of the six criteria and shows that configuration B.2.—legal services provided jointly by an in-house legal office, an unlimited number of private firms, and the County Attorney's Office, with in-house management and moderate containment of outside case load--emerges as the most highly ranked. A discussion of the analysis follows.

EXHIBIT 6.1

Rankings of Alternative Configurations by Selected Criteria*

Configuration	Management	Quality Service	Transition	Flexibility	Staff Accept	Cost	Total
A.1. Multiple private firms	5	1.5	1	3.5	2.5	5	18.5
A.2. Consolidated private firms	4	4	3.5	3.5	4	4	23.0
B.1. In-house and private firms, low internal case load	2	3	2	2	2.5	3	14.5
B.2. In-house and private firms, medium internal case load	2	1.5	3.5	1	1	2	11.0
B.3. In-house and private firms, high internal case load	2	5	5	5	5	1	23.0

* Ranked from 1 (high) to 5 (low); averages used for ties.

Management and Control Should Be Improved

Chapter 2 presented the case for necessary improvements in the management and control of MCPS legal services, and Chapter 4 showed that any of the alternatives still under consideration has some potential for bringing about that improvement. (It should be noted that Configuration A.1. only accomplishes the improvement at an added cost.) However, the potential is not equal for all configurations.

An external general counsel (provided in Configurations A.1. and A.2.) could make some progress in improving the management of legal services if that attorney were given more authority than currently. However, an external attorney will always be under at least two major constraints: (1) an external person has management control over only those items which MCPS elects to send to him or her, with no routine contacts or meetings within MCPS at which additional items may be uncovered; and (2) coordination over other private firms and attorneys is difficult to achieve, especially in those cases where normal professional practices are contrary to such coordination; i.e., certain items will never be shared by one firm with another or with anyone who is not the "client." In addition, an external

general counsel cannot run his or her own procurement nor assist MCPS in writing his or her own contract--both recommendations of Chapter 2.

Although all of these factors are not necessarily eliminated by in-house legal counsel, they are all at least ameliorated by such an arrangement. It is evident in this study that a serious effort to improve the management of legal services will require considerable action by MCPS itself.

To maximize the opportunities which the in-house configurations present for improving management, the staff attorneys should be a part of the superintendent's staff. This can be accomplished by either (1) creating a unit or department for legal services in the Office of the Superintendent or (2) establishing the legal office as a part of an existing MCPS department which reports to the superintendent. In the latter case, the principal staff attorney should have direct access to the superintendent for matters of legal content, regardless of his or her departmental location.

For the above reasons, the three configurations which provide in-house counsel (B.1., B.2., and B.3.) are judged equal and rated first. The two configurations with only external management provisions (A.1. and A.2.) are judged deficient, with A.2. given a slight edge because a consolidation of firms would be marginally easier to coordinate.

Quality of Anticipated Services Should Remain High

Although a lack of objective evidence regarding the quality of current legal services was noted in Chapter 2, MCPS staff and Board members appear to be generally satisfied with the present quality of services. The quality of services was not raised as a major study issue. Nevertheless, it may be that, with a better management structure which included evaluation and feedback mechanisms and with more competitive selection procurements, MCPS could raise the quality of legal services still higher. However, for the near future, that is an unknown. Meanwhile, MCPS should assure itself that any changes will maintain and build on the satisfactory level of service it now has.

An additional aspect of maintaining quality is to provide sufficient staff to perform the assigned functions without one task totally overshadowing, and hence reducing the quality of, another task. For legal services, it is important that a staff attorney's attention to the management issues not prevent adequate attention to the assigned in-house case load.

By including external providers in all five configurations, some of the current level of service is guaranteed under each. But again, the guaranteed amount is not equal for all five. Configuration A.1. permits the greatest interim retention of current providers, which best meets one measure of anticipated quality. Configuration B.2. equally balances the work load between internal and external resources and provides sufficient in-house legal staff to handle both management issues and case load with the potential for maintaining quality in both tasks. Therefore, these two configurations are judged first on the quality criterion.

Configuration B.1., which introduces a skeleton in-house staff which may not be able to devote sufficient attention to the legal cases while also trying to improve management, and A.2., which consolidates external firms and introduces some unknown service providers, are judged somewhat poorer on this criterion. Configuration B.3., which brings an extensive case load in-house, was rated last--solely because of the very large unknown measure of quality which it introduces by eliminating about 80 percent of the external services now being provided.

Transition from Current Arrangements Should Minimize Disruption and Loss of Continuity

Three major reasons exist for minimizing disruption during the transition from current arrangements to any new configuration. These are (1) MCPS currently enjoys an established and effective client-attorney relationship, and any abrupt deviation would, at least temporarily, disrupt the effectiveness with which legal issues are addressed; (2) existing attorneys are familiar with current and past case precedents involving MCPS, and this familiarity and expertise should not be disrupted too quickly; and (3) whichever attorney is giving increased attention in the first year of a new arrangement to establishing an effective management structure will not be able to provide as close oversight to the introduction, casework, and evaluation of new service providers.

Since configuration A.1. would initially be very similar to the current arrangement and would require virtually no transition in the case area, it is rated first. Configuration B.1., which also would initially leave many of the current providers in place but substitutes some in-house casework for an external provider, ranks a close second. Configurations A.2. and B.2., which disrupt current providers to the extent that consolidation takes place and/or hours of some firms are cut back, are judged next. Configuration B.3. is considered least favorable on this criterion because of the massive change it requires.

Flexibility for MCPS Should Be Maximized

One of the primary objectives of a new legal services arrangement is to establish a management structure with the capability to collect data and evaluate services beyond what was available in this study. Until that evaluation information is available, MCPS cannot be certain of the best long-term arrangement for providing legal services. Therefore, any arrangement put in place now should possess an inherent capability to change with identified needs until a "best fit" legal services system is in place.

At the same time, MCPS must assure itself that the in-house role is not too quickly limited to only management tasks, without some experimentation in handling enough of the actual case work internally so that a solid basis for an evaluation of this approach is established.

The ideal way to accomplish such flexibility, without "locking in" one or more external firms by giving them a still larger and more important role, is to bring management and a significant portion of the legal services case

load within MCPS. Leaving about half of the case work to the existing private firms and attorneys allows for adjustments, either way, when and if evaluation shows that to be cost-effective. Therefore, Configuration B.2. is judged superior on flexibility since it establishes a substantial in-house office, but it leaves MCPS with all its options still open.

The flexibility inherent in Configuration B.2. can be enhanced by two implementation strategies. One, the staff attorneys should be hired under two-year contracts, renewable only if MCPS elects to continue in-house legal services. This arrangement gives MCPS maximum flexibility, while establishing definite, rather than open-ended, commitments to the persons hired. The possible bias of the staff attorneys to evaluate themselves into permanent positions is more than offset by the incentive for those persons to establish a truly cost-effective legal services system.

Two, the staff attorneys must be given responsibility for the budgeting and control of all legal services funds, including those for association relations. (A possible exception is the risk management legal services for which costs are actually a part of the overall insurance premium MCPS pays.) Centralization of funds not only improves management control, it also gives the in-house attorneys maximum flexibility in determining which cases and services should be provided in-house and which by external attorneys.

Configuration B.1. is ranked second, mainly because it will not provide a true test of an in-house arrangement since the internal resources provided cannot make a substantial dent in the case load.

The two configurations (A.1. and A.2.) which leave legal services outside MCPS are rated next since they require fewer changes which may be difficult to reverse later should other options become more appealing. The remaining in-house configuration (B.3.) is ranked last because, after a few years, it will be very difficult to rebuild the relationships with the attorneys whose services were eliminated should that option ever prove desirable.

MCPS Staff Involved with Legal Services Should Find the Arrangement Acceptable

There does not appear to be a consensus among staff as to whether or not an in-house counsel would be most beneficial to MCPS, nor is there a solid commitment to retain indefinitely the current legal services providers. What did appear during the study is a willingness and openness to experiment with some new alternatives which build on, rather than replace, the legal services MCPS now has. Only a massive and abrupt change would be clearly unacceptable to current staff.

If MCPS is going to attempt any changes in the hope of improving the cost-effectiveness of legal services, Configuration B.2. appears to have the best chance of gaining maximum staff acceptance--in part for the same reasons as used to judge flexibility but also because it provides for sufficient resources to take on a creditable amount of the legal work load. Therefore, it is rated first. Configurations A.1. and B.1. represent the least change from current practice and follow in ratings. Configuration A.2. is ranked

next, and because B.3. is too massive a change to gain ready acceptance from staff, it is rated last.

Cost-effectiveness Should Be Maximized

Since the quality or effectiveness of any arrangement, including the current one, was shown to be difficult to rate, this criterion must be largely measured on cost alone. The range of cost estimates developed in Chapter 5 indicate that every in-house configuration except B.1 is less costly than the estimate for FY 1984 if no changes are made (current services) and the other totally-external configurations. The rankings are the following:

Arrangement	Estimate	Range
Configuration B.3.	$353,600	$300,600 to 406,600
Configuration B.2.	368,900	313,600 to 424,200
Configuration B.1.	411,000	349,400 to 472,700
Configuration A.2.	427,500	363,400 to 491,600
Current services	436,000	370,600 to 501,400
Configuration A.1.	448,500	381,300 to 515,800

Summary

It is evident from this analysis that, if all of the criteria are considered to be of equal weight, Configuration B.2.--an in-house legal office with moderate containment of external case work--emerges as the preferred option.

Recommendation

Based on the results of the comparative analysis and other factors identified in this report, the Board of Education should establish Configuration B.2. as the arrangement for providing MCPS legal services. This configuration provides for:

- An in-house legal services office consisting of two attorneys, a paralegal assistant, and a legal secretary
- Continued use of external private legal firms for about 50 percent of the case work
- Expanded management of the legal services activities by the MCPS staff attorneys
- Continued use of the County Attorney's Office in connection with the risk management/self-insurance program

If this recommendation had been implemented for all of FY 1984, study estimates predict that the cost would be $368,900 approximately $67,000 less than the $436,000 projected under the current arrangements with no changes. Even with these savings, MCPS would be purchasing expanded management of legal services and establishing a framework for the evaluation of continuing legal services, with the aim of adjusting the mix of providers in the future in the most cost-effective manner.

Allocation of Legal Services Between Internal Attorneys and External Attorneys

The recommended configuration for providing MCPS legal services calls for bringing about 50 percent of the legal services work in-house and leaving the remainder with private firms and attorneys. How the work load would be allocated between the two sets of attorneys and how the existing legal services providers would be impacted become important considerations in developing an implementation strategy.

On the one hand, allocation decisions should not be made until the staff attorneys are hired, their specific areas of legal expertise identified, and their recommendations regarding the most suitable division of labor known. On the other hand, it is difficult to know the type of attorney to recruit for the staff positions or even to finalize an implementation plan without some idea of the work distribution. Therefore, some tentative suggestions are provided here for preliminary consideration, with the understanding that they are not to be considered firm or final recommendations.

Four assumptions were made in arriving at these tentative allocations, as follows:

- One-half a person-year of the two MCPS staff attorneys' time must be allocated to management of all legal services before any other decisions are made. This allocation leaves 1.5 person-years of staff time to handle other legal services tasks.
- Until any new arrangement for legal services is tried and evaluated, it would be desirable to retain all or most of the current external attorneys for some continuing work, even if the number of hours were curtailed for some of them.
- General legal advice and counseling functions are more suited to in-house attorneys; and specific cases should make up the bulk of the work assigned externally.
- At least for the first several years, virtually all litigation work should remain with external attorneys.

In Chapter 1 it was shown that specific case assignments comprised from 40 to 90 percent of the workload of the external attorneys, with advice, policy discussions, written opinions, etc. making up the rest. A firm percentage across all legal services is not available. However, if a mid-point percentage is assumed for a 65/35 split, then about one-third of the MCPS

legal work is in the general counseling area rather than specific case assignments. One-third of the work is about one person-year; and in accordance with the above assumptions would be assigned in-house.

When the one person-year of general legal counseling work is added to the half person-year of management work, 1.5 of the 2 staff attorney person-years of effort are accounted for. There is time left for only about half a person-year of specific case work.

To determine which specific cases would also be handled in-house requires an analysis of the 14 areas of legal services listed in Chapter 1. "Board policies," "Legal opinions," and "General/other" are already assigned in-house under the third of the above assumptions. "Tort/liability" and "Workmen's compensation" are handled by the County Attorney's Office and are not candidates for MCPS in-house coverage. "School closings" and "Desegregation" represent very uneven workloads from year to year, depending on facilities planning and Board decisions; and for that reason are prime areas to remain external.

Of the remaining seven legal service areas, four -- "Construction," "Pension," "Procurement," and "School facilities" -- represent very small portions of total dollar and time expenditures. Any or all of these could be assigned in house. However, to assign these small areas to MCPS staff would violate the assumption to retain existing attorneys during the transition period. Also, all four areas together are not half a person year.

By a process of elimination, then, the legal service areas of "Association relations," "Personnel matters," and "Special education" are the most likely ones to transfer to staff attorneys. Together, these three areas "bill" about 2,000 hours; but only 850 hours need to be transferred to fill the available staff time. These 850 hours could come all from the special education area or some from each. In either case, enough hours would be left to retain all three special counsels and assign to them those cases requiring the most highly specialized legal work and expertise. The decision regarding which hours to transfer in which field can only be made after the staff attorneys are hired and their legal expertise known.

In summary, if the recommended configuration for the delivery of MCPS legal services were implemented, one plan which appears workable for the allocation of services would be as follows:

MCPS Staff Attorneys

- Management of legal services
- Counsel and opinions
- Selected cases from Association Relations, Personnel, and/or Special Education; or the remainder of cases entirely from Special Education

Private Attorneys

- Specific general counsel cases
- Remainder of cases from Association Relations, Personnel, and/or Special Education
- All other case work assignments, including litigation

County Attorney's Office

- Risk management/self-insurance cases

Much discussion has taken place regarding the effects a new arrangement would have on MCPS. Likewise, MCPS should not lose sight of the effects a new arrangement could possibly have on its current legal services providers. They are part of the private enterprise system and subject to constant changes in the market place. Nevertheless, in developing any new arrangement, MCPS should be constantly cognizant of the effects its actions could have on current legal services providers and move in such a manner as to not unduly jeopardize their economic health or well being.

APPENDICIES

APPENDIX A

Attorneys Used by MCPS For Legal Services[1]

Mr. Frank Cummings
Marshall, Bratter, Greene,
Allision, and Tucker
1140 Connecticut Ave., NW
Washington, D.C. 20036

Mr. E. Stephen Derby
Piper and Marbury
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Mr. Richard E. Ekstrand
McGill and Ekstrand
Suite 4
966 Hungerford Drive
Rockville, Maryland 20850

Mr. Kenneth F. Hickey
Morgan, Lewis, and Bockius
1800 M Street, NW
Washington, D.C. 20036

Mr. George W. Johnston
Venable, Baetjer, and Howard
1800 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201

Mr. Charles A. Reese
Reese and Carney
8651 Baltimore National Pike
Ellicott City, Maryland 21043

Mr. Roger W. Titus
Titus and Glasgow
502 Suburban Trust Building
255 North Washington Street
P.O. Box 1906
Rockville, Maryland 20850

Mr. Clyde H. Sorrell
County Attorney's Office
101 Monroe Street
Rockville, Maryland 20850

Services Rendered by Legal Activity and Attorney

Legal Activity	Cummings	Derby	Ekstrand	Hickey	Johnston	Reese	Titus	Sorrell
Association Relations				X				
BOE Policies		X			X	X		
School Closings						X		
Construction						X	X	
Desegregation		X				X		
General/Other					X	X	X	
Legal Opinion						X		
Pension and Retirement	X					X		
Personnel Matters					X	X	X	
Procurement						X	X	
School Facilities						X		
Special Education			X		X	X		
Tort/Liability Claims								X
Workmens Compensation								X

1. Includes principal attorneys for FY 82 and FY 83; major activity underlined

APPENDIX B

Persons Interviewed and Interview Protocols

MCPS Staff Interviewed Regarding the Provision of Legal Services

Name	Job Title
Mr. Larry A. Bowers	Administrative Assistant to the Deputy Superintendent
Mr. Robert G. Cooney	Director, Department of Association Relations
Mr. Richard G. Fazakerly	Associate Superintendent for Supportive Services
Mr. Thomas S. Fess	Ombudsman/Staff Assistant to the Board
Dr. George W. Fisher	Director, Department of Educational Facilities
Dr. Hiawatha B. Fountain	Associate Superintendent for Special and Alternative Education
Mr. Gordon J. McDonald	Director, Division of Insurance and Retirement
Dr. Lois A. Martin	Associate Superintendent for Instruction and Program Development
Dr. Raphael Minsky	Consulting Psychologist, Diagnostic and Professional Support Team
Dr. Kenneth K. Muir	Director, Department of Information
Mr. Rettakudi Nagarajan	Director, Division of Procurement
Dr. Leonard M. Orloff	Director, Department of Staff Development
Dr. Philip H. Rohr	Director, Division of Construction and Capital Projects
Dr. Stephen M. Rohr	Director, Department of Personnel Services
Dr. Robert S. Shaffner	Executive Assistant to the Superintendent
Ms. Mary Helen Smith	Administrative Assistant to the Deputy Superintendent

Board of Education Members Interviewed[1]

Mr. Blair G. Ewing

Mrs. Suzanne K. Peyser

1. Interviews were conducted at the request of the Board of Education.

APPENDIX B CONT'D.

Attorneys and Firms Interviewed for Legal Services

Attorney	Firm/Affiliation
Mr. E. Stephen Derby	Piper and Marbury
Mr. Richard E. Ekstrand	McGill and Ekstrand
Mr. Kenneth F. Hickey	Morgan, Lewis, and Bockius
Mrs. Ellen Heller	Maryland Attorney General's Office
Mr. George W. Johnston	Venable, Baetjer, and Howard
Mr. Charles A. Reese	Reese and Carney
Mr. Robert Silverstein	Long and Silverstein
Mr. Gus Steinhelper	National School Board Association, Council of School Attorneys
Mr. Shale Stiller	Frank, Berstein, Conaway, and Goldman
Mr. Roger W. Titus	Titus and Glasgow
Mr. Clyde H. Sorrell	Montgomery County Attorney's Office

APPENDIX B CONT'D.

STAFF QUESTIONNAIRE ON THE PROVISION OF LEGAL SERVICES

QUESTIONS RE INTERVIEW PROTOCOL

I. CURRENT ARRANGEMENTS

1.1 To what extent are you involved in using using legal services?

What is your specific role vis a vis legal service providers?

What general types of issues have you had to deal with?

Take a specific case and describe the steps involved in obtaining legal services from initial identification of the problem or issue to its final resolution.

Are these steps the ones you generally take for any of the issues brought to you? If not, what other practices or procedures do you use and what are the circumstances?

Do you screen staff requests for the provision of legal services? Are some rejected? Are your requests screened? By whom?

1.2 What written procedures or directives are available to guide you in obtaining legal services? (ASK WHERE WE MIGHT OBTAIN COPIES.)

1.3 Who has provided legal services on your behalf? How did you get to this attorney? (ATTORNEY/S NAME AND FIRM)

1.4 Have you had any problems or delays in obtaining resolution of legal matters?

1.5 How satisfied are you with the services rendered?

1.6 What MCPS staff if any, are directly involved in the provision of legal services? What functions do they perform?

1.7 Are you aware of other resources that can be used to obtain legal services, e.g., County Attorney's Office?

1.8 How do you budget for legal services?

How much is budgeted? On what basis or projection?
Is that amount sufficient? What accounts are used?
Are costs for legal services charged to any other accounts?

II. LEGAL ISSUES

2.1 What records are available on the issues that you submitted to legal counsel? (OBTAIN PERMISSION TO REVIEW RECORDS.)

2.2 What is your record for legal decisions?

2.3 What types of issues were submitted to legal counsel that, with hindsight, legal counsel would not have been necessary? Why?

2.4 What types of legal issues were not submitted to legal counsel that, with hindsight, should have been submitted? Are there legal issues you would have preferred to submit , but did not for cost reasons?

2.5 What emerging issues may have implications for future legal counsel? Why?

2.6 Can your legal issues be categorized as those which do not warrant formal legal counsel and those which definitely require formal legal counsel? Please explain.

III. RESOURCES

3.1 Do you or any of your staff have legal training?
If so, do you use this legal expertise?
If not, would staff with legal training be desirable?

3.2 Do you attempt to do any legal research before formally submitting your requests to legal counsel? If yes, what resources do you use and who do you call on?

3.3 What controls over the use of legal services do you feel are essential?

Who currently reviews the attorneys' work?
Who determines whether or not we should pay bills received?

IV. LEGAL ARRANGEMENTS

4.1 For your specific type of legal needs, are you aware of others using alternative methods to meet those needs? Please explain.

Considering different types of arrangements for providing legal services: (a) the creation of an MCPS office of legal counsel; (b) contracting with private law firms; (c) use of the state/county attorney's office; and (d) a combination of two or more of the above,

4.2 Please give us your views on the relative strengths and weaknesses of each approach for providing legal services. (REPEAT EACH ARRANGEMENT)

4.3 Not restricting yourself to the previous discussion, what arrangement or combination of arrangements do you feel best meet the needs of MCPS? Please explain.

If costs were not a factor, would you still pick the same arrangement as best?
If costs become on overriding factor, what would be your choice?

APPENDIX B CONT'D.

ATTORNEY QUESTIONNAIRE ON THE PROVISION OF LEGAL SERVICES

QUESTIONS RE INTERVIEW PROTOCOL

I. CURRENT ARRANGEMENTS

1.1 To what extent does MCPS use your firm for legal services?

What general types of issues have you had to deal with?

Take a specific case and describe the steps involved in using your legal services from initial presentation of the problem or issue to its final resolution.

Are these steps the ones you generally take for any of the issues brought to you? If not, what other practices or procedures do you use and what are the circumstances?

What percentage of the MCPS requests for legal services do you consider routine? Are requests clear and specific enough to let you focus your research and reply? From whom do you get requests?

1.2 What written procedures or directives between attorney and MCPS are available to guide you in providing us legal services?

What is your firm's precise association with MCPS? What relationships, if any, do you have with other school districts?

1.3 Who has provided legal services to MCPS; e.g., were other attorneys/firms contracted by you to provide MCPS service?

1.4 How satisfied are you with the activities done by MCPS in their preparation for legal cases?

1.5 What resources of yours could be used to assist MCPS in their work regarding legal services?

1.6 How do you charge for legal services rendered to MCPS? How are time charges accumulated? Are you recovering all costs?

1.7 What other fee arrangements are available from your firm? In what ways could MCPS minimize your legal service costs?

II. LEGAL ISSUES

2.1 What records are available on the issues that you rendered legal counsel to MCPS, e.g., cost, type, resolution, MCPS office, or person.

2.2 What types of issues were submitted to legal counsel that, with hindsight, legal counsel would not have been necessary? Why?

2.3 What types of legal issues were not submitted to legal counsel that, with hindsight, should have been submitted?

2.5 What emerging issues may have implications for future legal counsel? Why?

2.6 Can legal issues be categorized as those which do not warrant formal legal counsel and those which definitely require formal legal counsel? Please explain.

2.7 Are you involved in reviews of MCPS policies?

2.8 Does a good legal defense strategy require an attorney seeing all potentially controversial items in advance for approval, or should the BOE go further on its own judgement without referral to attorney?

III. RESOURCES

3.1 Do MCPS staff that work with you have any legal training?
If so, do you use this legal expertise?
If not, would staff with legal training be desirable?

3.2 Does MCPS staff do any legal research before formally submitting requests for legal counsel to you? If yes, is it helpful?

3.3 What controls over our use of your services do you feel are essential? Who in MCPS currently reviews your work?

3.4 Do you believe contracts between a public agency and attorneys should be subject to the competative bid process?

3.5 Would your firm be able to provide legal services across more areas? At a dollar savings to us?

IV. LEGAL ARRANGEMENTS

4.1 For MCPS's specific type of legal needs, are you aware of other districts using alternative methods to meet those needs? Please explain.

Considering different types of arrangements for providing legal services: (a) the creation of an MCPS office of legal counsel; (b) contracting with private law firms; (c) use of the state/county attorney's office; and (d) a combination of two or more of the above,

4.2 Please give us your views on the relative strengths and weaknesses of each approach for providing legal services. Are there particular areas of the law that might better lend themselves to one alternative?

In house
Private
County Attorney

4.3 Now restricting youself to the previous discussion, what arrangement or combination of arrangements do you feel best meet the needs of MCPS?

APPENDIX B CONT'D.

BOARD MEMBER QUESTIONNAIRE ON THE PROVISION OF LEGAL SERVICES

QUESTIONS RE INTERVIEW PROTOCOL

I. CURRENT ARRANGEMENTS

1.1 To what extent is the Board involved in using using legal services? Is there any role for individual Board members?

What is your specific role vis a vis legal service providers?
What general types of issues have you had to deal with?
How does the Board screen requests for the provision of legal services?
Are your requests screened? By whom?

1.2 What written procedures or directives are available to guide you in obtaining legal services?

1.3 How does the Board determine who will serve as attorney/s? How are specific cases assigned to individual attorneys?

1.4 Have you had any problems or delays in obtaining resolution of legal matters?

1.5 How satisfied are you with the services rendered?

1.6 Other than the superintendent and executive, are you aware of any MCPS staff who are directly involved in the provision of legal services? What functions do they perform?

1.7 Are you aware of other resources that can be used to obtain legal services, e.g., County Attorney's Office?

1.8 How does the Board budget for legal services?

How much is budgeted? On what basis or projection?
Is that amount sufficient? What accounts are used?
Are costs for legal services charged to any other accounts?

II. LEGAL ISSUES

2.1 What records are available to you on the issues that the Board submitted to legal counsel?

2.2 What types of issues were submitted to legal counsel that, with hindsight, legal counsel would not have been necessary? Why?

2.3 What types of legal issues were not submitted to legal counsel that, with hindsight, should have been submitted? Are there legal issues you would have preferred to submit , but did not for cost reasons?

2.4 What emerging issues may have implications for future legal counsel? Why?

BOARD MEMBER QUESTIONNAIRE CONT'D.

2.5 Can the Board's legal issues be categorized as those which do not warrant formal legal counsel and those which definitely require formal legal counsel? Please explain.

III. RESOURCES

3.1 Do you have legal training?
If so, do you use this legal expertise?
If not, would legal training be desirable for Board members?

3.2 Does the Board request any legal research from staff before formally submitting requests to legal counsel?

3.3 What controls over the use of legal services do you feel are essential?

IV. LEGAL ARRANGEMENTS

4.1 Are you familiar with, or have any experience, in how other school districts or public sector bodies obtain legal services? Please explain.

Considering different types of arrangements for providing legal services: (a) the creation of an MCPS office of legal counsel; (b) contracting with private law firms; (c) use of the state/county attorney's office; and (d) a combination of two or more of the above,

4.2 Please give us your views on the relative strengths and weaknesses of each approach for providing legal services. (REPEAT EACH ARRANGEMENT)

4.3 Not restricting youself to the previous discussion, what arrangement or combination of arrangements do you feel best meet the needs of MCPS? Please explain.

If costs were not a factor, would you still pick the same arrangement as best?

If costs become on overriding factor, what would be your choice?

APPENDIX C

Study Design

STUDY QUESTION 1. What are the current arrangements, procedures, and resources for obtaining and using legal services?

The task in Question 1 is to determine what are our current practices related to the provision of legal services and what laws, policies, procedures, and other directives govern these practice. An interview protocol will be developed addressing the Question 1 Subquestions shown below. The interviews will be held with executive level staff, other senior level staff, and agency and private firm lawyers/attorneys involved in providing MCPS legal services. In addition, related documents will be reviewed to determine the latitudes and constraints placed on providing legal services.

QUESTION 1 SUBQUESTIONS

1.1 What are the current arrangements for the provision of legal counsel?

1.2 What MCPS monies, budgeted and actual, were expended for legal services for FY 79 through FY 83?

1.3 Who provided legal services that were paid for and rendered on behalf of MCPS?

1.4 How does MCPS procure the legal counsel personnel which it currently uses? On what is the legal fee structure based?

1.5 What procedures are in place to obtain and use legal services under the current arrangement? How are requests for legal services screened?

1.6 What staff, if any, are directly involved in the provision of legal counsel. What functions do they perform?

1.7 What resources, other than those purchased by MCPS, are or have been used to provide legal counsel or service?

The data obtained from Question 1 will be used to describe the current arrangements for providing legal services. All significant parties involved, including non-MCPS agencies and private firms, will be identified; and all major latitudes and constraints placed on our provision of legal services will be documented.

STUDY QUESTION 2. What matters or issues were the subject of legal counsel and what was their cost and resolution?

Question 2 deals with the types of issues which constitute the legal services workload. The interview protocol developed for Question 1 will be supplemented to cover the specific subquestions shown below. The document reviews for this question address specific case records; budget and financial statements, including those from non-MCPS service providers; and other

materials necessary to establish type, resolution, and cost of issues that were submitted to legal counsel.

QUESTION 2 SUBQUESTIONS

2.1 How many issues, by type, were submitted to legal counsel during FY 82 and FY 83?

2.2 What were the costs, by issue type, for legal services for FY 82 and FY 83?

2.3 What issues were considered for, but not subjected to, legal counsel?

2.4 What issues are emerging which may have direct implication for legal counsel?

2.5 What issues were subjected to legal counsel for which, with hindsight, legal counsel was not necessary, and which issues should have been submitted for legal counsel but were not?

2.6 To what extent were legal services provided in a timely fashion?

2.7 To what extent have the issues subjected to legal counsel been resolved in favor of MCPS? What cases do we often lose?

2.8 Are there any precedents indicating that certain types of issues, though having legal implications, should not be pursued or should be handled administratively with or without legal counsel?

2.9 Are there identified types of legal matters which dictate specific arrangements for legal counsel (e.g., conflicts of interest)?

The resulting analysis for Question 2 will show the costs for legal services by type or issue, how effective and timely our legal counsel has been, constraints on handling certain type issues, and what new or emerging issues require our attention.

STUDY QUESTION 3. What currently allocated and potential resources could be directly applied to the provision of legal services?

Question 3 addresses the human and material resources that have been or could be directed towards the provision of legal services. Again, the Question 1 interview protocol will be supplemented to obtain answers to the Question 3 Subquestions listed below. In addition, these questions would be asked of representatives of selected others groups, e.g., law schools, service organizations, and government offices.

QUESTION 3 SUBQUESTIONS

3.1 What are the FY 84 allocations for legal counsel in terms of dollars budgeted, staff time, and committed other non-MCPS agency resources (e.g., County Attorney)? What are the hidden costs?

3.2 What potential exists for using onboard staff having legal training in the provision of legal services? How do we identify such staff?

3.3 What potential exists for using volunteers (e.g., law students, retired lawyers, and other trained personnel) as supports in the provision of legal services?

3.4 What is the feasibility of using existing county or state material resources as supplements or replacements to those used by or for MCPS in the provision of legal services (e.g., The Westlaw automated research system)?

The attempt here is not only to show the costs to MCPS for its legal services but also to determine what resources are readily available but have not been tapped. These resources, both human and material, may potentially free executive level staff from some of the tasks they now perform, supplement or replace existing direct cost items, or provide new or more timely legal services.

STUDY QUESTION 4. How do comparable school districts obtain legal counsel?

As mentioned in the background, DEA has conducted a survey of 32 large school districts' provisions for legal services. Districts in that sample which are most comparable to MCPS in terms of size and legal issues faced will be recontacted to update the earlier information and answer those Question 3 Subquestions which were not addressed in the original survey.

QUESTION 4 SUBQUESTIONS

4.1 What are the different arrangements made by comparable districts in their provision of legal counsel?

4.2 What have been the positive and negative experiences of other districts with the various arrangements they follow for providing legal services?

4.3 Are there identifiable types of legal services which dictate specific arrangements for legal counsel?

4.4 What factors seemed to dictate the various arrangements for legal counsel?

4.5 What role does the district staff play in the provision of legal services?

4.6 What staff controls are deemed essential in the management of the provision of legal counsel?

The inquiry regarding Question 4 will document the arrangements made by comparable school districts in their provision of legal services. Common factors which appear to influence or dictate arrangements for providing legal service will be identified.

STUDY QUESTION 5. What are the strengths and weaknesses of the various arrangements which may be used to provide for legal counsel?

There are two major tasks associated with Question 5: a) describing the major alternative arrangements for providing legal services and b) assessing the merits of these arrangements for MCPS. The first task involves an analysis of the data previously collected and a review of the literature. The second task requires additional data collection. A final open-ended question will be added to the interview protocol described earlier soliciting respondents' views on what they believe to be the appropriate arrangements for legal services in MCPS. In addition, a separate questionnaire will be developed and administered to executive and senior level staff, BOE members, and private and public attorneys. Various aspects of providing legal services will be described and respondents will be asked to assess their merits for MCPS using standard criteria (e.g., cost, time, and effectiveness.)

QUESTION 5 SUBQUESTIONS

5.1 What are the major different operational arrangements that can be made for the provision of legal counsel?

5.2 What arrangements, if any, would be ruled out by local conditions (e.g., laws, binding committments), and why?

5.3 What factors or local conditions would be especially favorable to each of the arrangements?

5.4 What factors or local conditions would mitigate against each of the arrangements?

5.5 What merit, in terms of standard criteria (e.g., cost, time, and effectiveness) does staff and the BOE place on each arrangement?

The resulting data, along with that from the previous questions, constitute the base from which alternative models for a comprehensive legal system for MCPS will be derived.

STUDY QUESTION 6. What are the components and alternative configurations of a cost-effective legal system?

The results of the entire study will be synthesized to present those selected alternative configurations of legal service arrangements which appear to be most promising for MCPS. Specific components will be identified, methods of operations will be discussed, strengths and weaknesses will be summarized, and costs will be estimated.

QUESTION 6 SUBQUESTIONS

6.1 What general arrangement for the provision of legal counsel/service appears to be best suited to the MCPS?

6.2 What are the major components of this arrangement?

6.3 What are the functions of each component?

6.4 What are the staffing, cost, and other resource implications for each component? What are the direct, indirect, hidden and start up costs?

6.6 What are the strengths and limitations of alternative configurations of this arrangement for legal counsel?

APPENDIX D

Other School Districts

Schedule of Legal Services Estimated Costs and Types of Arrangements by School District and Size

School District	Enrollment(1)	Est. cost(2) (1,000)	Types of Arrangements: Outside Counsel	In-house & Outside Counsel	Public Counsel
Dade Co., Fla.	224,580	$ 300		x	
Detroit City, Mich.	208,656	365		x	
Houston, Texas	193,702	450	x		
Broward Co., Fla.	127,758	80	x		
Dallas, Texas	127,585	525		x	
Fairfax Co., Va.	124,631	234	x		
Prince Georges Co., Md.	116,598	400	x		
Memphis City, Tenn.	111,262	175	x		
San Diego City, Calif.	110,904	270		x	
Hillsborough Co., Fla.	109,953	122	x		
Duval Co., Fla.	99,512	114			x
Jefferson Co., Ky.	96,609	308		x	
Montgomery Co., Md.	95,587	427	x(3)		
District of Columbia	94,975	280		x(4)	
Baltimore Co., Md.	92,387	2			x
Clark Co., Nev.	89,547	189		x	
Milwaukee, Wis.	86,312	-0-			x
Pinellas Co., Fla.	85,341	110	x		
Orleans Parish, La.	83,391	283	x		
Orange Co., Fla.	79,431	155	x		
Jefferson Co., Colo.	77,274	233	x		
Dekalb Co., Ga.	76,114	170	x		
Cleveland, Ohio	75,796	650		x	
Mecklenburg Co., N.C.	72,756	30	x		
Albuquerque, N.M.	72,012	58		x	
Columbus, Ohio	71,594	200		x	
Atlanta City, Ga.	69,977	125		x	
Nashville-Davidson Co., Tenn.	67,437	50			x
Anne Arundel Co., Md.	67,422	200	x		
Boston, Mass.	62,989	300		x	
Denver, Colo.	62,438	200	x		
Saint Louis City, Mo.	60,693	300	x		
Indianapolis, Ind.	57,152	350	x		
Totals			16	12	4

(1) Unpublished data for 1981-82, National Center for Education Statistics.
(2) Based on telephone discussion with school respondent.
(3) Montgomery Co., Md. not included in totals.
(4) Public counsel used as outside counsel.

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